

TSD File Inventory Index

Date: Oct. 18, 2004

Initial: LAH/peano

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Facility Identification Number: <u>IND. 984 984,140</u>		
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Note: Transmittal Letter to Be Included with Reports.
Comments:

BARNES & THORNBURG

Marcie R. Horowitz
(317) 231-7519

1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204
(317) 638-1313

TWX 810-341-3427 B&T LAW IND
Telecopier (317) 231-7433

September 29, 1995

United States Environmental Protection Agency
Waste Management Division
RCRA Enforcement Branch
77 West Jackson Boulevard
Chicago, Illinois 60604
Attention: Thad Slaughter (HRE-8J)



Re: Hoosier Spline Broach Corp., Docket No. V-W-16-93

Dear Mr. Slaughter:

On behalf of Hoosier Spline Broach Corp., and in anticipation of the entry of the CAFO in the above-referenced matter, enclosed please find Respondent's most recent hazardous waste determination for the Blanchard grinding sludge generated at the Facility. This submission is intended to fulfill the requirements of paragraph III(A) of the CAFO. Please note that the laboratory analyses are for TCLP metals only; Respondent has previously determined, through its knowledge of waste, that the waste does not exhibit any other hazard characteristic. *See* 40 C.F.R. § 262.11(c)(2). Respondent has further determined that the waste is not a listed hazardous waste. 40 C.F.R. § 262.11(b).

As we have previously demonstrated, this most recent determination confirms that Respondent's waste is not a RCRA hazardous waste.

Sincerely yours,

Marcie R. Horowitz

MRH:naw

Enclosure

Via Certified Mail

cc: Mr. Thomas Linson (IDEM)
John Tielsch, Esquire

INDS01 ACS 118242



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

SEP 29 1995

HR-8J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Gilbert Larison
Hoosier Spline Broach Corporation
1401 Touby Pike
P.O. Box 538
Kokomo, Indiana 46903

Re: Consent Agreement and Final Order
Hoosier Spline Broach Corporation
Kokomo, Indiana 46903
Docket No. V-W-016'93
IND 984 958 140

Dear Mr. Larison:

This letter is to acknowledge receipt of the Consent Agreement and Final Order signed by representatives of Hoosier Spline Broach Corporation. A fully executed copy of the Consent Agreement and Final Order is enclosed for your files.

Your cooperation in resolving this matter is appreciated.

Sincerely yours,


Norman R. Niedergang
Associate Director for RCRA
Waste Management Division

Enclosure

cc: Thomas Linson, IDEM (w/enclosure)

John Tielsch

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
REGIONAL HEARING

'95 SEP 29 P3:07

US
PROF
EPA

IN RE:)	
)	
HOOSIER SPLINE BROACH CORPORATION)	DOCKET NO. V-W-16-93
1401 TOUBY PIKE)	
KOKOMO, INDIANA 46903)	CONSENT AGREEMENT AND
)	FINAL ORDER
IND 984 958 140)	
)	
RESPONDENT)	

I. PREAMBLE

On June 30, 1993, a Complaint was filed in this matter pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. Section 6928, and the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22. The Complainant is the Associate Division Director, Office of RCRA, Waste Management Division, Region 5, United States Environmental Protection Agency (U.S. EPA). The Respondent is Hoosier Spline Broach Corporation at its facility located at 1401 Touby Pike, Kokomo, Indiana. On July 20, 1995, Counts Two, Three and Four of the Complaint were dismissed with prejudice, and an Amended Complaint was filed in this matter.

II. STIPULATIONS

The parties, desiring to settle this action, without trial or other actual litigation of the issues or any adjudication of the facts, and to avoid the expense and disruption of litigation, enter into the following stipulations:

1. Respondent has been served with a copy of the "Complaint, Findings of Violation and Compliance Order" and the "Amended Complaint" (Docket No. V-W-16-93) in this matter.
2. Respondent is an Indiana Corporation whose registered agent in Indiana is Mr. Gilbert Larison, Hoosier Spline Broach Corporation, 1401 Touby Pike, P. O. Box 538, Kokomo, Indiana 46903. Respondent owns and operates a facility located at 1401 Touby Pike, Kokomo, Indiana 46903 (the "Facility").
3. For purposes of this proceeding, Respondent admits that Complainant has jurisdiction to issue the Complaint and Amended Complaint in this matter and jurisdiction to enter into this Consent Agreement and Final Order (CAFO). Respondent agrees not to contest such jurisdiction in any proceeding to enforce the provisions of this CAFO.
4. For purposes of this proceeding, Respondent neither admits nor denies the specific factual allegations contained in the Amended Complaint. Respondent denies the conclusions of law set forth in the Amended Complaint.
5. This CAFO shall not constitute any evidence or admission by any party hereto, and both parties are entering this CAFO

solely as a settlement and to resolve this matter.

Respondent's execution of this CAFO is not an admission of liability for any purpose.

6. Respondent explicitly withdraws its request for a hearing and waives any and all rights under any provisions of law to a hearing on the allegations contained in the Complaint or the Amended Complaint or to challenge the terms and conditions of this CAFO.
7. If the Respondent fails to comply with any provision contained in the Final Order, Respondent waives any rights it may possess in law or equity to challenge the authority of the U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with the CAFO and/or to seek an additional penalty for the noncompliance.
8. Respondent consents to the issuance of the Final Order hereinafter set forth and hereby consents to the assessment of a civil penalty of THREE THOUSAND DOLLARS (\$3,000.00). Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the cash civil penalty paid to the U.S. Treasury.
9. Until the termination of this CAFO under Section VI(B) below, Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of

ownership or operational control of the Facility. This CAFO is binding on Respondent and any successors in interest.

10. On January 31, 1986, the State of Indiana was granted final authorization by the Administrator of the U.S. EPA, pursuant to Section 3006(b) of RCRA, 42 U.S.C. Section 6926(b), to administer a hazardous waste program in lieu of the Federal program. Section 3008 of RCRA, 42 U.S.C. Section 6928, provides that the U.S. EPA may enforce State regulations in those States authorized to administer a hazardous waste program.
11. Nothing in this CAFO shall be construed to relieve Respondent from its obligation to comply with all applicable federal, state and local statutes and regulations, including the RCRA Subtitle C requirements at 40 CFR Parts 260 through 270.
12. This CAFO shall become effective on the date it is signed by the Director, Waste Management Division.

III. FINAL ORDER

Based on the foregoing stipulations, the Parties agree to the entry of the following Final Order:

- A. Respondent shall, within fifteen (15) days after the effective date of this Final Order, provide U.S. EPA with the Respondent's most recent hazardous waste determination for the Blanchard grinding sludge generated at the Facility.

This hazardous waste determination shall be submitted to the United States Environmental Protection Agency, Region V, Waste Management Division, RCRA Enforcement Branch, Attention: Thad Slaughter, (HRE-8J), 77 West Jackson Boulevard, Chicago, Illinois 60604, unless otherwise specified.

A copy of these documents and all correspondence with U.S. EPA regarding this Order shall also be submitted to Mr. Thomas Linson, Chief, Hazardous Waste Management Branch, Indiana Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015.

- B. Respondent shall pay a civil penalty in the amount of THREE THOUSAND DOLLARS (\$3,000.00) within thirty (30) days of the effective date of this Final Order. Payment shall be made by certified or cashier's check payable to the Treasurer of the United States of America and shall be mailed to U.S. EPA, Region V, Regional Finance Office, P.O. Box 70753, Chicago, Illinois 60673. The name of the Respondent and the Docket Number of this proceeding shall be clearly marked on the face of the check. Copies of the transmittal of the payment shall be sent to: the Regional Hearing Clerk, Planning and Management Division (M-19J); the Solid Waste and Emergency Response Branch Secretary, Office of Regional Counsel (CS-29A); and Thad Slaughter of the RCRA Enforcement

Branch (HRE-8J); U.S. EPA, 77 West Jackson Boulevard,
Chicago, Illinois 60604-3590.

IV. AMOUNTS OVERDUE

Pursuant to 31 U.S.C. Section 3717, Respondent shall pay the following amounts on any amount overdue under this Consent Agreement and Final Order (CAFO):

- A. **Interest.** Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. Section 3717(a)(1). Interest shall begin to accrue from the date a copy of this CAFO is mailed to Respondent, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the mailing date.
- B. **Monthly Handling Charge.** Respondent shall pay a late payment handling charge of \$20.00 on any late payment, with an additional charge of \$10.00 for each subsequent 30-day period over which an unpaid balance remains.
- C. **Non-Payment Penalty.** On any portion of the assessed penalty more than ninety (90) days past due, Respondent shall pay a non-payment penalty of six percent (6%) per annum, which shall be calculated as of the day the underlying penalty first became past due. This non-payment penalty is in addition to charges which accrue or may accrue under sections (A) and (B).

V. PENALTIES FOR NONCOMPLIANCE

Failure to comply with any requirement of this Final Order may subject Respondent to liability for a penalty of up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000) for each day of continued non-compliance with the terms of the Final Order. U.S. EPA is authorized to assess such penalties pursuant to RCRA Section 3008(c).

VI. EFFECT OF SETTLEMENT

- A. This Consent Agreement and Final Order (CAFO) constitutes the entire settlement between the parties, and constitutes final disposition of the Complaint and Amended Complaint filed in this case and stipulations hereinbefore recited. All prior discussions, negotiations, and document drafts are merged herein.
- B. Respondent's obligations under this CAFO shall end when it has satisfied all of the requirements of Section III of this CAFO (including full payment of the civil penalty) and, if applicable, full payment of any amounts overdue pursuant to Section IV.
- C. Respondent waives any right it may have pursuant to 40 CFR 22.08 to be present during discussions with, or to be served with and reply to, any memorandum or communication addressed to the Associate Division Director, Office of RCRA, or the Director, Waste Management Division, or their superiors, where the purpose of such discussion, memorandum or

communication is solely to persuade such an official to accept and issue the Consent Agreement and Final Order.

VII. RESERVATION OF RIGHTS

Notwithstanding any other provision of this Final Order, U.S. EPA expressly reserves any and all rights to bring an enforcement action pursuant to Section 7003 of RCRA, 42 U.S.C. Section 6973, or other statutory authority should U.S. EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at the Facility may present an imminent and substantial endangerment to health or the environment. U.S. EPA also expressly reserves the right: (1) for any matters other than the matters addressed in the Complaint or Amended Complaint, to take any action authorized under Section 3008 of RCRA; (2) to enforce compliance with the applicable provision of the Indiana Administrative Code; (3) to take any action authorized under 40 CFR Parts 124 and 270; and (4) to enforce compliance with this Consent Agreement and Final Order.

VIII. SIGNATORIES

Each undersigned representative of a Party to this Consent Agreement and Final Order consisting of 10 pages certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to legally bind such party to this document.

Agreed to this 7 TH day of SEPTEMBER, 1995.

By Gilbert Larison
Mr. Gilbert Larison
For Hoosier Spline Broach Corporation
Respondent

Title PRESIDENT

Agreed this 29th day of September, 1995.

By Norman R. Niedergang
Norman R. Niedergang, Associate Division Director for RCRA
Waste Management Division
U.S. Environmental Protection Agency
Region 5, Complainant

The above agreed and consented to, it is so ordered

this 29th day of September, 1995.

William E. Muno
William E. Muno, Acting Director
Waste Management Division
U.S. Environmental Protection Agency
Region 5

IN THE MATTER OF:
HOOSIER SPLINE BROACH CORPORATION
DOCKET NO. V-W-16-93
1401 TOUBY PIKE
KOKOMO, INDIANA 46903
IND 984 958 140

IN THE MATTER OF:
Hoosier Spline Broach Corporation
1401 Touby Pike
Kokomo, Indiana
IND 984 958 140

DOCKET NO. V-W-16-93

CERTIFICATE OF SERVICE


I hereby certify that I have caused a copy of the foregoing CAFO to be served upon the person designated below on the date below, by causing said copy to be deposited in the U.S. Mail, First Class and certified-return receipt requested, postage prepaid, at Chicago, Illinois in an envelope addressed to:

Gilbert Larison
Hoosier Spline Broach Corporation
1401 Touby Pike
P.O. Box 538
Kokomo, Indiana 46903

I further caused the original of the CAFO and this Certificate of Service to be served in the Office of the Regional Hearing Clerk, located in the Planning and Management Division, U.S. EPA, Region 5, 77 west Jackson Boulevard, Chicago, Illinois 60604-3590, on the date below.

This was said person's last known address to the subscriber.

Dated this 1st day of October 1995.


Secretary, RCRA Enforcement Branch
U.S. EPA, Region 5

RECEIVED
REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

US ENVIRONMENTAL
PROTECTION AGENCY
REGION V

IN THE MATTER OF)

Hoosier Spline Broach Corp.,)

Respondent)

Dkt. No. V-W-16-93

MOTION TO AMEND COUNT I OF THE COMPLAINT AND TO DISMISS COUNTS
II, III AND IV

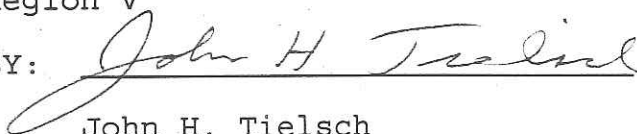
Complainant, the Associate Division Director of the Office of RCRA, Waste Management Division, Region 5, U.S. EPA, by his attorney, respectfully moves the Administrative Law Judge, pursuant to 40 CFR 22.14(d), for leave to file the attached Amended Complaint, and to dismiss with prejudice Counts II, III and IV of the original Complaint in this cause.

Respondent has no objection to this motion.

RESPECTFULLY SUBMITTED,

Norman Niedergang
Associate Division Director
Office of RCRA, Waste Management Division
Complainant
U.S. Environmental Protection Agency
Region V

BY:



John H. Tielsch
Assistant Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN RE:)	
)	
HOOSIER SPLINE BROACH CORPORATION)	DOCKET NO. V-W-16-93
1401 TOUBY PIKE)	
KOKOMO, INDIANA 46903)	
)	
IND 984 958 140)	
)	
RESPONDENT)	

AMENDED COMPLAINT

GENERAL ALLEGATIONS

1. This is a civil administrative action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. §6928(a)(1), and 40 CFR Sections 22.01(a), 22.13, and 22.37 of the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits.
2. The Complainant is, by lawful delegation, the Associate Director, Office of RCRA, Waste Management Division, Region 5, United States Environmental Protection Agency (U.S. EPA).
3. The Respondent is Hoosier Spline Broach Corporation, which is and was at all times relevant to this Complaint, the owner and operator of a facility located at 1401 Touby Pike, Kokomo, Indiana 46903.
4. The Respondent, Hoosier Spline Broach Corporation, is a person, as defined by Section 1004(15) of RCRA, 42 U.S.C. §6903(15) and 329 Indiana Administrative Code (IAC) §3-1-7/320 IAC 4.1-1-7 and 40 CFR §260.10, who

owns and operates a facility that generates, treats, stores, or disposes of hazardous waste.

5. Respondent is an Indiana corporation whose registered agent in Indiana is Mr. Gilbert Larison, Hoosier Spline Broach Corporation, 1401 Touby Pike, P. O. Box 538, Kokomo, Indiana 46903.
6. On January 31, 1986, the State of Indiana was granted Final Authorization by the Administrator of U.S. EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. §6926(b), to administer a hazardous waste program in lieu of the Federal program. See 51 Federal Register 3953 (1986). A revision to the authorized program was authorized effective September 23, 1991. See 56 Federal Register 33866 (1991). Sections 3006(b) and 3008(a) of RCRA, 42 U.S.C. §6926(b) and §6928(a), respectively, provide that U.S. EPA may enforce State regulations in lieu of Federal regulations in those States authorized to administer a hazardous waste program.
7. U.S. EPA has provided notice to the State of Indiana concerning this Complaint pursuant to Section 3008(a)(2), 42 U.S.C. §6928(a)(2).
8. Any violation of regulations promulgated pursuant to Subtitle C, §§3001-3019 of RCRA, 42 U.S.C. §§6921-6039(b), or any State provision approved pursuant to §3006 of RCRA, 42 U.S.C. §6926, constitutes a violation of RCRA, subject to the assessment of civil or criminal penalties and compliance orders as provided in §3008 of RCRA, 42 U.S.C. 6928.

COUNT ONE

9. The allegations of paragraphs 1-8 of the Complaint are incorporated by reference as though set forth here in full.
10. Continuously from February 1990 to February 22, 1992, Respondent discarded sludge generated by a Blanchard grinder in the manufacturing of spline broaches for the automotive industry ("Blanchard sludge") in a waste pile at the facility.
11. On or about February 22, 1992, the Respondent placed the contents of the waste pile into 85 55-gallon drums.
12. On or about March 9, 1992, the Respondent submitted a RCRA §3010 notification and obtained an EPA identification number for the facility from U.S. EPA.
13. On or about May 29, 1992, the Respondent shipped approximately 40 cubic yards of the drummed waste pile contents to the CWM/CID Landfill in Calumet City, Illinois, for disposal. Hazardous waste manifests IL3685368 and IL3846747 accompanied the shipment.
14. Respondent's Blanchard sludge is a solid waste. Respondent, as a generator of solid waste, is required to make a hazardous waste determination as described in 40 CFR §262.11 and 329 IAC §3-7-2, 329 IAC 3.1-7-1(2), and 320 IAC §4.1-7-2 at the time the waste is generated.
15. Respondent failed to make a timely hazardous waste determination with respect to the Blanchard sludge placed in the waste pile beginning on September 29, 1990, in violation of 40 CFR §262.11 and

329 IAC §3-7-2, 329 IAC 3-7-1(2) and 320 IAC §4.1-7-2.

II

COMPLIANCE ORDER

Respondent having been initially determined to be in violation of the above cited rules and regulations, the following Compliance Order pursuant to Section 3008 of RCRA, 42 U.S.C. §6928, is entered:

A. Within fifteen (15) days of the effective date of this Order, the Respondent shall provide U.S. EPA with the Respondent's hazardous waste determination for the blanchard grinding sludge generated at its facility.

B. This determination shall be submitted no later than the time stipulated above to the U.S. EPA, Region 5, Waste Management Division, 77 West Jackson Boulevard, Chicago, Illinois 60604, Attention: Thad Slaughter, RCRA Enforcement Branch, HRE-8J.

A copy of these documents and all correspondence with U.S. EPA regarding this Order shall also be submitted to Mr. Thomas Linson, Chief, Hazardous Waste Management Branch, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206-6015.

Notwithstanding any other provision of this Order, an enforcement action may be brought pursuant to Section 7003 of RCRA or other statutory authority where the handling, storage, treatment, transportation, or disposal of solid or hazardous waste at this facility may present an imminent and substantial endangerment to human health or the environment.

III

PROPOSED CIVIL PENALTY

In view of the above determination and in consideration of the seriousness of the violations cited herein, the potential harm to human health and the environment, and the ability of the Respondent to pay penalties, the Complainant proposes to assess a civil penalty in the amount of THREE THOUSAND DOLLARS (\$3,000.00) against the Respondent, Hoosier Spline Broach Corporation, pursuant to Sections 3008(c) and 3008(g) of RCRA, 42 U.S.C. §6928. Attachment 1 to the Complaint provides a summary of the proposed civil penalty. Payment shall be made by certified or cashier's check payable to the Treasurer of the United States of America and shall be mailed to U.S. EPA, Region 5, P.O. Box 70753, Chicago, Illinois 60673. Copies of the transmittal of the payment should be sent to both the Regional Hearing Clerk, Planning and Management Division (MF-10J), and the Solid Waste and Emergency Response Branch Secretary, Office of Regional Counsel, (CS-29A), U.S. EPA, 77 West Jackson Blvd., Chicago, Illinois 60604.

Failure to comply with any requirements of the Order shall subject the above-named Respondent to liability for a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000) for each day of continued noncompliance with the deadlines contained in this Order. U.S. EPA is authorized to assess such penalties pursuant to RCRA Section 3008(c).

IV

NOTICE OF OPPORTUNITY FOR HEARING

The above-named Respondent has the right to request a hearing to contest any material factual allegation set forth in the Complaint and Compliance Order or the appropriateness of any proposed compliance schedule or penalty. Unless Respondent has filed an answer not later than thirty (30) days from the date this Complaint is filed with the Regional Hearing Clerk, Respondent may be found in default of the above Complaint and Compliance Order.

To avoid a finding of default by the Regional Administrator you must file a written answer to this Complaint with the Regional Hearing Clerk, Planning and Management Division (MF-10J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, by

A copy of your answer and any subsequent documents filed in this action should be sent to Mr. John Tielsch, Assistant Regional Counsel (CS-29A), at the same address. Failure to answer by that date may result in a finding by the Regional Administrator that the entire amount of penalty sought in the Complaint is due and payable and subject to the interest and penalty provisions contained in the Federal Claims Collection Act of 1966, 31 U.S.C. §§3701 et seq.

Your answer should clearly and directly admit, deny, or explain each of the

factual allegations of which Respondent has knowledge. Said answer should contain: (1) a definite statement of the facts which constitute the grounds of defense; and (2) a concise statement of the facts which Respondent intends to place at issue in the hearing.

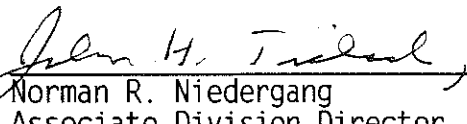
The Consolidated Rules of Practice Governing the Administrative assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22, are applicable to this administrative action. A copy of these Rules is enclosed with this Complaint.

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may confer informally with U.S. EPA concerning: (1) whether the alleged violations in fact occurred as set forth above; (2) the appropriateness of the compliance schedule; and (3) the appropriateness of any proposed penalty in relation to the gravity of the violations, and the Respondent's ability to pay such penalty. Respondent may request an informal settlement conference at any time by contacting this office. Any such request, however, will not affect either the thirty-day time limit for responding to this Complaint or the thirty-day time limit for requesting a formal hearing on the violations alleged herein.

U.S. EPA encourages all parties to pursue the possibilities of settlement through informal conferences. A request for an informal conference should be made in writing to Thad Slaughter, RCRA Enforcement Branch (HRE-8J), at the address cited above, or by calling him at (312) 886-4460.

Dated this 12th day of July, 1995.

 Assistant Regional Counsel
Norman R. Niedergang
Associate Division Director
Office of RCRA
Complainant
U.S. Environmental Protection Agency
Region 5

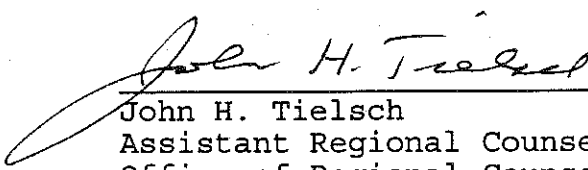
CERTIFICATE OF SERVICE

I hereby certify that the original of this Motion was filed with the Regional Hearing Clerk, Region 5, on this 12th day of July 1995, and copies sent by certified mail, return receipt requested, to:

Frank W. Vanderheyden
Administrative Law Judge
U.S. Environmental Protection Agency
401 M Street, S.W.
Mail Code 1900
Washington, D.C. 20460

Marcie R. Horowitz
Barnes & Thornburg
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204

Date: 7/12/95


John H. Tielsch
Assistant Regional Counsel
Office of Regional Counsel
CS-29A
U.S. Environmental Protection
Agency, Region V
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Chicago, Illinois 60604-3590
(312) 353-7447

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Telecopier (317) 231-7433

June 23, 1995

John Tielsch, Esquire
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region V (CS-3T)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Re: Hoosier Spline Broach Corp.

Dear John:

This is to confirm our conversation scheduled for Tuesday, June 27, 1995 to discuss our witness lists and deposition schedule. In our phone conversation yesterday, we agreed to set aside July 11-13 for depositions. We may need to set aside additional time, depending on the number of depositions we each ultimately decide to take.

As for the possibility of settlement, unless there is a radical shift in EPA's position in this case, my personal view is that our settlement prospects are dim. Whatever EPA may have thought about the merits of its position two years ago when the case was initiated, subsequent developments have made it clear that *Hoosier Spline Broach is not a generator of hazardous waste subject to RCRA jurisdiction*. We advised EPA of this fact in December 1993, and, as you know, IDEM subsequently concurred and certified Hoosier Spline Broach's blanchard waste and baghouse dust as a special waste.

Moreover, as I mentioned yesterday, our investigation has revealed that the four "pile" samples on which EPA relies were averaged incorrectly by IDEM, which treated them as four *independent* samples. In fact, the two NET samples (Sample #30267 (5.8 ppm) and Sample #36781 (10 ppm)) were apparently two repeated analyses of the same sample. (See attached document obtained from NET. No separate chain of custody has ever been identified for Sample #36781.) Putting aside for the moment NET's incredibly slipshod, "comedy-of-errors" work in this matter (i.e., assuming that the 5.8 and

John Tielsch, Esquire
June 23, 1995
Page 2

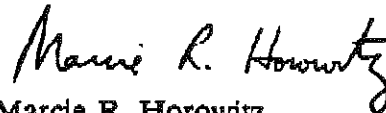
10 ppm values were accurate as reported¹), the correct average for the three (not four) samples was 4.5 ppm, not 5.3 as IDEM calculated.

EPA cannot meet its burden of proof in this case. Moreover, there is nothing left to remedy. Hoosier Spline Broach's grinding waste is not, in fact, hazardous. The pile is long gone, safely (and overcautiously) disposed of in a secure landfill. There is absolutely no demonstrated harm to human health or the environment. Hoosier Spline Broach's waste disposal practices are better than ever. And throughout the course of this fiasco, Hoosier Spline Broach willingly and eagerly cooperated with and followed the instructions of all the so-called "experts" -- Waste Management, NET, and IDEM -- in a good faith attempt to comply with the law. Frankly, under these circumstances, any continued attempt by EPA to penalize Hoosier Spline Broach as a hazardous waste generator could be characterized as frivolous.

In short, John, while we will certainly entertain any good faith effort by the EPA to settle this case, we are prepared to go forward with the hearing at this point. I hope you can convince your client that this will not be necessary.

I look forward to speaking with you on Tuesday.

Sincerely,



Marcie R. Horowitz

MRH:naw
Attachment
Via Telecopy

¹This is an assumption we will vigorously challenge at the hearing. As an example, neither sample had a valid matrix spike correction as the TCLP rule requires. No matrix spike was run on Sample #30267. On Sample #36781, a matrix spike and matrix spike duplicate were run but both were unreliable. (Among other things, the sample absorbance for each was considerably outside the range of the calibration curve. As any first-year student of analytical chemistry knows, the samples should have been diluted and rerun. They were not. Hence, NET's subsequent attempt to "correct" its reported result for Sample #36781 from 10 to 14 ppm, based on the matrix spike results, is not technically defensible.)

NOTES: RE-ANALYSIS FOR TELP CK WITH 30265
ON SAMPLE 30267 - HUSTON SPRING BRANCH



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

May 25, 1994

Frank W. Vanderheyden
Administrative Law Judge
U.S. Environmental Protection Agency
401 M Street, S.W.
Mail Code 1900
Washington, D.C. 20460

Re: In the Matter of Hoosier Spline Broach Corp.
Docket No. V-W-16-93

Dear Judge Vanderheyden:

Enclosed is the parties' joint bi-monthly status report in the above matter.

Sincerely yours,

A handwritten signature in cursive script, reading "John H. Tielsch".

John H. Tielsch
Assistant Regional Counsel

cc: Regional Hearing Clerk (5MFA-14)

Marcie R. Horowitz
Barnes & Thornburg
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204

GRIGGS STEEL COMPANY

15431 W. ELEVEN MILE ROAD

OAK PARK, MICHIGAN 48237

(313) 841-6226

November 1, 1993

Mr. Jeff Larison
Hoosier Spline Broach Corp.
P.O. Box 538
Kokomo, Indiana 46903-0538

Dear Jeff,

I want to confirm to you that Griggs has sold your company High Speed Tool Steel, and only High Speed Tool Steel, for over twenty years. Our only product is High Speed Tool Steel.

Below are the chemistries of all the High Speed Tool Steels that you could have bought from us.

ELEMENT (%)

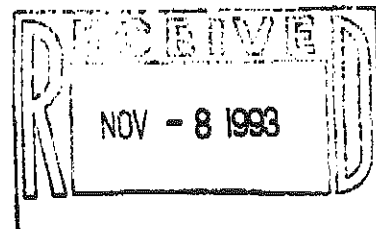
GRADE	CARBON	CHROME	TUNGSTEN	MOLY	VANADIUM	COBALT
M-2	.80/.88	3.60/4.35	5.90/6.60	4.65/5.35	1.65/2.10	0
M-3	1.00/1.20	3.65/4.35	5.90/6.60	5.65/6.35	2.30/2.90	0
M-4	1.20/1.40	4.15/4.85	5.10/5.85	4.15/4.85	3.65/4.35	0
M-42	.95/1.15	3.40/4.10	1.20/1.80	8.90/10.10	.90/1.60	7.65/8.35
T-15	1.50/1.70	3.80/4.50	11.5/13.0	.90/1.20	4.70/5.30	4.80/5.30

If we can help in any way let us know.

Best regards,

GRIGGS STEEL COMPANY


Frank H. Mullen
President



From: JOHN LUKSIS
To: TIELSCH-JOHN
Date: Tuesday, June 14, 1994 4:35 pm
Subject: Hoosier Spline Broach Financial Analysis

I have done a quick review of the information provided to me and I need to request the following information from Hoosier Spline Broach before I can complete my evaluation. Can you please forward this request to their attorney. Thanks.

1. Provide an itemized list of all assets of Hoosier Spline Broach. The list should include date of purchase, asset description, original cost, and current fair market value.
2. Provide a maturity schedule for the long-term debt balance of \$436,319 as of 9/30/93.
3. Provide a list of all bank accounts with current balances as of 9/30/93 for Hoosier Spline Broach. This list should identify the names and addresses of banks and savings and loan associations. Also identify checking accounts, savings accounts, money market accounts, CD accounts, trust accounts, or other accounts.
4. Provide compensation paid to officers Jeff Larison and Mary Larison for years 1989 through 1993.
5. Provide the current market value of all treasury stock.
6. Provide the current market value of the facility that is being leased by Hoosier Spline Broach. Provide the names of the owners of this facility.
7. Provide financial statements (income statement, balance sheet, and statement of cash flows) for six months ending 3/31/94 for Hoosier Spline Broach.

CC: SLAUGHTER-THAD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF

HOOSIER SPLINE BROACH CORPORATION,

Respondent

)
)
) Docket No. V-W-16-93
)
)

PREHEARING CONFERENCE REPORT AND ORDERS

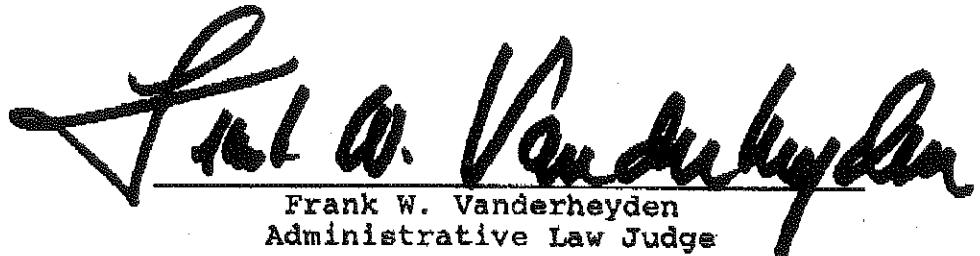
This confirms the oral order issued during the telephone prehearing conference (PHC) with the parties on June 7, 1995.

IT IS ORDERED that:

1. Subject to obtaining appropriate space, the hearing in the subject proceeding shall commence in Indianapolis, Indiana on July 26, 1995, and continue until completion.
2. The Hearing Clerk shall immediately make arrangements to obtain hearing accommodations for a three-day period, and services of a reporter to transcribe proceedings. When a hearing facility is acquired, a further order will issue advising the parties of the location and addressing other pertinent matters associated with the proceeding.
3. Unless stipulated otherwise, the parties are alerted now that at the hearing exhibits characterized as "affidavits" or "certified" documents are not necessarily substitutes for live witnesses where their testimony is subject to cross-examination. Depending on the totality of circumstances, such exhibits may be excluded from admission.

4. Requests by any party for a continuance of a hearing date are viewed with disfavor. In this regard, the parties shall advise all witnesses immediately of the aforementioned hearing date and the necessity for their appearance. Should a subpoena be necessary to compel attendance, and where appropriate legal authority exists, the parties may request same to compel attendance.

5. Any motion for a continuance shall only be considered if accompanied by an affidavit setting forth compelling reasons, and such motion will only be granted upon a convincing showing of good cause.


Frank W. Vanderheyden
Administrative Law Judge

Dated: June 12, 1995

PLEASE TYPE

(Form designed for use on elite (12-pitch) typewriter)

EPA Form 8700-22 (Rev. 9-88)

Form Approved. OMB No. 2050-0039, Expires 9-30-92

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator's US EPA ID No. IND 984958140		Manifest Document No. 00001		2. Page 1 of 1		Information in the shaded areas is not required by Federal law, but is required by Illinois law.	
3. Generator's Name and Mailing Address HOOSIER SPLINE BROACH CORP P.O. BOX 538 KOKOMO, IN 46903-0538				Location If Different 1401 TOUBY PIKE KOKOMO, IN		A. Illinois Manifest Document Number IL 3846748 FEE PAID IF APPLICABLE			
4. 24 HOUR EMERGENCY AND SPILL ASSISTANCE NUMBERS 317-452-8273				6. US EPA ID Number ILD 099202681		B. Illinois Generator's ID 19 11 18 10 16 17 16 16 11			
5. Transporter 1 Company Name CHEMICAL WASTE MANAGEMENT, INC.				8. US EPA ID Number		C. Illinois Transporter's ID 10 10 17 15			
7. Transporter 2 Company Name				10. US EPA ID Number		D. (216) 423-1655 Transporter's Phone			
9. Designated Facility Name and Site Address CWM/CID LANDFILL 138TH & CALUMET EXPRESSWAY CALUMET CITY, IL 60409				12. Containers No. Type 001 CM		13. Total Quantity 0 0 2 0		14. Unit Y	
11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number) a. RQ, HAZARDOUS WASTE SOLID, N.O.S. ORM-E NA9189 (D007)				15. Special Handling Instructions and Additional Information PROFILE # AF2818 GRINDING SLUDGE		16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment. OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford. Printed/Typed Name GILBERT LARISON, PRESIDENT Signature Gilbert Larison Date 07/19/93			
17. Transporter 1 Acknowledgement of Receipt of Materials Printed/Typed Name Vigil Atkins Signature Vigil Atkins Date 07/19/93				18. Transporter 2 Acknowledgement of Receipt of Materials Printed/Typed Name Signature Date		19. Discrepancy Indication Space *Incorrectly signed by authorisation # on site Amended per phone call with Dianne Houston 8/26/93 1:30pm 20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19. Printed/Typed Name CARL NEUMAN Signature Carl Neuman Date 8/26/93			

This Agency is authorized to require, pursuant to Illinois Revised Statutes, 1989, Chapter 111 1/2, Section 1004 and 1021, that this information be submitted to the Agency. Failure to provide this information may result in a civil penalty against the owner or operator not to exceed \$25,000 per day of violation. Falsification of this information may result in a fine up to \$50,000 per day of violation and imprisonment up to 5 years. This form has been approved by the Forms Management Center.

**COPY 2. TSD MAIL TO IEPA
(RCRA AND PCB WASTES)**



STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY DIVISION OF LAND POLLUTION CONTROL

P.O. BOX 19276

SPRINGFIELD, ILLINOIS 62794-9276 (217) 782-6781

FOR SHIPMENT OF HAZARDOUS
AND SPECIAL WASTE

State Form LPC 62 8/81

IL532-0610

PLEASE TYPE

(Form designed for use on elite (12-pitch) typewriter.)

EPA Form 8700-22 (Rev. 9-88)

Form Approved. OMB No. 2050-0039, Expires 9-30-92

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator's US EPA ID No. IND 984958140	Manifest Document No. 00002	2. Page 1 of 1	Information in the shaded areas is not required by Federal law, but is required by Illinois law.
3. Generator's Name and Mailing Address HOOSIER SPLINE BROACH CORP P.O. BOX 538 KOKOMO, IN 46903-0538		Location If Different 1401 TOUBY PIKE KOKOMO, IN (317) 452-8273		A. Illinois Manifest Document Number IL 3846747 FEE PAID IF APPLICABLE	
4. 24 HOUR EMERGENCY AND SPILL ASSISTANCE NUMBERS		6. US EPA ID Number ILD 099202681		B. Illinois Generator's ID 1911810617171511	
5. Transporter 1 Company Name CHEMICAL WASTE MANAGEMENT, INC.		8. US EPA ID Number		C. Illinois Transporter's ID 10101715	
7. Transporter 2 Company Name		8. US EPA ID Number		D. (219) 423-1655 Transporter's Phone	
9. Designated Facility Name and Site Address CWM/CID LANDFILL 138th & CALUMET EXPRESSWAY CALUMET CITY, IL 60409		10. US EPA ID Number ILD 010284248		E. Illinois Transporter's ID F. Transporter's Phone	
11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number)		12. Containers No. Type		13. Total Quantity	14. Unit Wt/Vol
a. RQ, HAZARDOUS WASTE SOLID, N.O.S. ORM-E NA9189 (D007)		001 CM		0 0 0 2 0	Y
b.					
c.					
d.					
J. Additional Description for Materials Listed Above PROPILE # AF2818 GRINDING SLUDGE		K. Handling Codes for Wastes Listed Above In Item #14 G = Gallons Y = Cubic Yards			
15. Special Handling Instructions and Additional Information EMERGENCY CONTACT PHONE # (205) 652-9721					
16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment. OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.					
Printed/Typed Name GILBERT LARISON, PRESIDENT		Signature <i>Gilbert Larison</i>		Date 05 29 92	
17. Transporter 1 Acknowledgement of Receipt of Materials Printed/Typed Name ALLEN P Cox		Signature <i>Allen P Cox</i>		Date 06 12 92	
18. Transporter 2 Acknowledgement of Receipt of Materials Printed/Typed Name		Signature		Date	
19. Discrepancy Indication Space					
20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.		Signature <i>Carl Netman</i>		Date 06 12 92	

This Agency is authorized to require, pursuant to Illinois Revised Statute, 1989, Chapter 111 1/2, Section 1004 and 1021, that the information be submitted to the Agency. Failure to provide this information may result in a civil penalty against the owner or operator not to exceed \$25,000 per day of violation. Falsification of this information may result in a fine up to \$50,000 per day of violation and imprisonment up to 5 years. This form has been approved by the Waste Management Center.

COPY 2. TSD MAIL TO IEPA
(RCRA AND PCB WASTES)

In case of a spill call the Illinois Office of Emergency Response at 217 / 782-7860 and the National Response Center at 800 / 424-8802 or 202 / 426-2675.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN RE:

HOOSIER SPLINE BROACH CORPORATION
1401 TOUHY PIKE
KOKOMO, INDIANA 46903

IND 984 958 140

RESPONDENT

DOCKET NO. V-W-16-93

CONSENT AGREEMENT AND
FINAL ORDER

DRAFT

MAY 20 1994

PREAMBLE

On June 30, 1993, a Complaint was filed in this matter pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. Section 6928, and the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22. The Complainant is the Associate Division Director, Office of RCRA, Waste Management Division, Region 5, United States Environmental Protection Agency (U.S. EPA). The Respondent is Hoosier Spline Broach Corporation at its facility located at 1401 Touhy Pike, Kokomo, Indiana.

STIPULATIONS

The parties, desiring to settle this action, enter into the following stipulations:

1. Respondent has been served with a copy of the Complaint, Findings of Violation and Compliance Order (Docket No. V-W-16-93) in this matter.
2. Respondent is an Indiana Corporation whose registered agent in Indiana is Mr. Gilbert Larison, Hoosier Spline Broach Corporation (the facility), 1401 Touhy Pike, P. O. Box 538, Kokomo, Indiana 46903.

3. Respondent admits the jurisdictional allegations contained in the Complaint.
4. Respondent neither admits nor denies the specific factual allegations contained in the Complaint other than admissions made in Respondent's Answer.
5. Respondent explicitly waives its right to a hearing on the allegations contained in the Complaint.
6. Should the Respondent fail to comply with any provision contained in the subsequent Final Order, Respondent waives any rights it may possess in law or equity to challenge the authority of the U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with the Final Order and/or to seek an additional penalty for the noncompliance.
7. Respondent consents to the issuance of the Order hereinafter set forth and hereby consents to the payment of a civil penalty in the amount therein specified.
8. On January 31, 1986, the State of Indiana was granted Final Authorization by the Administrator of U.S. EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. §6926(b), to administer a hazardous waste program in lieu of the Federal program. See 51 Federal Register 3953 (1986). A revision to the authorized program was authorized effective September 23, 1991. See 56 Federal Register 33866 (1991). Sections 3006(b) and 3008(a) of RCRA, 42 U.S.C. §6926(b) and §6928(a), respectively, provide that U.S. EPA may enforce State regulations in lieu of Federal regulations in those States

authorized to administer a hazardous waste program.

9. Section 3006(g) of RCRA, 42 U.S.C. §6926(g) authorizes the U.S. EPA to enforce Federal requirements or prohibitions applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste, which are imposed pursuant to the Hazardous and Solid Waste Amendments of 1984 (HWSA) in authorized States.
10. This Consent Agreement and Final Order shall become effective on the date it is signed by the Director, Waste Management Division.

FINAL ORDER

Based on the foregoing stipulations, the Parties agree to the entry of the following Final Order:

- A. Respondent shall, immediately upon the effective date of this Final Order, (except as otherwise specified below), cease all treatment, storage or disposal of any hazardous waste except such treatment, storage or disposal as shall be in compliance with the interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities.
- B. Respondent shall, immediately upon the effective date of this Final Order, (except as otherwise specified below), achieve and maintain compliance with the standards applicable to generators of hazardous waste.
- C. Respondent shall, within forty-five (45) days after the effective date of this Final Order, the Respondent shall determine if each solid waste the facility generates is a hazardous waste, as required by 40 CFR §262.11.

The respondent shall submit all waste stream analyses and regulatory determinations to U.S. EPA and the Indiana Department of Environmental Management (IDEM) for review. The waste streams tested include, but are not limited to, the blanchard grinding sludge and the baghouse dust sludge generated at the facility.

- D. Within forty-five (45) days of the effective date of this Order, the Respondent shall submit to U.S. EPA, Region 5, RCRA Permitting Branch, for approval, a closure and, if necessary, post-closure plan which meets the requirements of 40 CFR Part 265 Subparts G and H for its waste pile of hazardous waste. The Respondent shall implement the approved plan(s) in accordance with the schedule(s) contained therein.
- E. Respondent shall notify U.S. EPA in writing upon achieving compliance with this Final Order or any part thereof. The notification(s) of compliance shall be attested to by a responsible official who shall state:

"I certify that the information contained in or accompanying this notification of compliance is true, accurate, and complete."

This notification shall be submitted no later than the time stipulated above to the Waste Management Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Attention: Thad Slaughter, RCRA Enforcement Branch, HRE-8J.

- F. A copy of these documents and all correspondence with U.S. EPA regarding this Final Order shall also be submitted to [Name and address of State contact].

G. Respondent shall pay a civil penalty in the amount of TWO HUNDRED SEVENTY-NINE THOUSAND AND FORTY-EIGHT DOLLARS (\$279,048.00) within thirty (30) days of the effective date this Final Order. Payment shall be made by certified or cashier's check payable to the Treasurer of the United States of America and shall be mailed to U.S. EPA, Region V, P.O. Box 70753, Chicago, Illinois 60673. Copies of the transmittal of the payment should be sent to both the Regional Hearing Clerk, Planning and Management Division (M-19J), and the Solid Waste and Emergency Response Branch Secretary, Office of Regional Counsel (CS-3T), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

The U.S. EPA may collect interest on any amounts overdue under the terms of this Final Order at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. Section 3717. A late payment handling charge of \$20.00 will be imposed on any late payment, with an additional charge of \$10.00 for each subsequent 30-day period over which an unpaid balance remains.

Failure to comply with any requirement of this Final Order may subject Respondent to liability for a penalty of up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000) for each day of continued non-compliance with the terms of the Final Order. U.S. EPA is authorized to assess such penalties pursuant to RCRA Section 3008(c).

This Final Order constitutes a settlement and final disposition of the Complaint filed in this case and stipulations hereinbefore recited.

Notwithstanding any other provision of this Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. Section 6973, or

other statutory authority should U.S. EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at the facility may present an imminent and substantial endangerment to health or the environment. U.S. EPA also expressly reserves the right to take any action necessary under Section 3008 of RCRA to enforce compliance with the applicable provision of 40 CFR Parts 124 and 270; and this Final Order.

SIGNATORIES

Each undersigned representative of a Party to this Consent Agreement and Final Order consisting of 7 pages certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to legally bind such party to this document.

Agreed to this _____ day of _____, 1994.

By _____
For Hoosier Spline Broach Corporation
Respondent

Title _____

Agreed this _____ day of _____, 1994.

By _____
Norman R. Niedergang, Associate Division Director for RCRA
Waste Management Division
U.S. Environmental Protection Agency
Region 5, Complainant

The above agreed and consented to, it is so ordered

this _____ day of _____, 1994.

William E. Muno, Director
Waste Management Division
U.S. Environmental Protection Agency
Region 5

IN THE MATTER OF:
HOOSIER SPLINE BROACH CORPORATION
DOCKET NO. V-W-16-'93
1401 TOUHY PIKE
KOKOMO, INDIANA 46903
IND 984 958 140

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

MEMORANDUM

SUBJECT: Hoosier Spline Broach Discovey Requests
FROM: John Tielsch, Assistant Regional Counsel
TO: Thad Slaughter, RCRA Enforcement Branch
DATE: April 21, 1994

Attached are document requests and interrogatories I recently received from Hoosier Spline. While we are not likely to provide much of the information they ask for, it is still important that we determine what is available regarding each of these topics. Even if we do not provide it in discovery, it will be necessary to be familiar with Agency positions on these matters in order to prepare for the hearing. Please provide a list of documents responsive to the requests which are in your Branch's possession or control. If there are any indexes, data bases, etc. which might be useful to search, let me know about them also. It is not necessary at this time to provide personal notes, drafts of documents, drafts of policies, comments on draft policies, or similar non-final documents.

Also, is there anything in addition to all the hazardous waste manifests we need to obtain from Hoosier Spline?

UNITES STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN RE:

HOOSIER SPLINE BROACH CORPORATION
1401 TOUBY PIKE
KOKOMO, INDIANA 46903

IND 984 958 140

RESPONDENT

DOCKET NO. V-W-16-93

RESPONDENT HOOSIER SPLINE BROACH CORP.'S
FIRST SET OF INTERROGATORIES

In accordance with paragraph 12 of the Notice and Order dated November 15, 1993 in the above-referenced matter, Respondent Hoosier Spline Broach Corp., by counsel, requests that Complainant, the Associate Director, Office of RCRA, Waste Management Division, Region V, United States Environmental Protection Agency (U.S. EPA), answer each of the following interrogatories no later than May 15, 1994.

Definitions and Instructions

1. The term "person" means any natural person, firm, association, partnership, corporation, governmental agency or any other entity, including any representatives of such person or persons.
2. The term "EPA" means the United States Environmental Protection Agency, and each of its offices, officers, employees, attorneys, agents, and other representatives.

3. The term "relate to" or "related to" or "relating to" means to consist of, refer to, pertain to, reflect or be in any way logically or factually connected with the matter mentioned in the request.

4. The term "regulations, test methods, guidance and policies" means (a) the regulations, test methods, guidance and policies cited in the interrogatory; and (b) any and all proposed, subsequent, or superseded regulations, test methods, guidance and policies that address the same subject matter as the cited regulations, test methods, guidance and policies.

5. The plural shall include the singular and the singular shall include the plural. Any reference to a male pronoun shall constitute reference to a female pronoun and vice versa.

6. The term "identify," with respect to a person, means (1) to provide the person's full name, the person's employer and position, and the persons' business address and telephone number, and (2) to specify the subsection of the interrogatory to which the identification is responsive.

INTERROGATORY NO. 1: Identify all persons currently or formerly with EPA (in either the Washington, D.C. headquarters of EPA or a regional office of EPA) who were or are principally responsible for the drafting, development and interpretation of the following regulations, test methods, guidance and policies:

- a) All regulations relating to the toxicity characteristic, including 40 C.F.R. § 261.24 and 40 C.F.R. Part 261 Appendix II (Method 1311 Toxicity Characteristic Leaching Procedure (TCLP)).
- b) All regulations relating to the hazardous waste determination, including 40 C.F.R. § 262.11.
- c) Chapter 1 of Test Methods for Evaluating Solid Waste (SW-846; 3d ed., November 1986) (Quality Control).
- d) Chapter 9 of Test Methods for Evaluating Solid Waste (SW-846; 3d ed., November 1986) (Sampling Plan).
- e) EPA SW-846 Method 6010
- f) EPA SW-846 Method 7000
- g) EPA SW-846 Method 7190
- h) EPA Method 218.1
- i) 58 Fed. Reg. 46046 (August 31, 1993) (policy regarding matrix spikes and method of standard additions).

ANSWER:

INTERROGATORY NO. 2: Identify the person currently at EPA Region V who is principally responsible for evaluating and auditing laboratory quality assurance/quality control practices for environmental laboratories within Region V.

ANSWER:

Respectfully submitted,

Marcie R. Horowitz

Marcie R. Horowitz (Attorney No. 15761-49)

BARNES & THORNBURG
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204

Attorney for Hoosier Spline Broach
Corporation

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of "Respondent Hoosier Spline Broach Corp.'s First Set of Interrogatories" has been served this 12th day of April, 1994, by depositing a copy of the same in the United States mail, first class postage prepaid and properly addressed to the following counsel of record:

John Tielsch, Esquire
Assistant Regional Counsel (CS-3T)
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590



Marcie R. Horowitz

UNITES STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN RE:)	
)	
HOOSIER SPLINE BROACH CORPORATION)	DOCKET NO. V-W-16-93
1401 TOUBY PIKE)	
KOKOMO, INDIANA 46903)	
)	
IND 984 958 140)	
)	
RESPONDENT)	

RESPONDENT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

In accordance with paragraph 12 of the Notice and Order dated November 15, 1993 in the above-referenced matter, Respondent Hoosier Spline Broach Corp., by counsel, requests that Complainant, the Associate Director, Office of RCRA, Waste Management Division, Region V, United States Environmental Protection Agency (U.S. EPA), produce the documents requested below at 9:00 a.m. on May 15, 1994, at the offices of Barnes & Thornburg, 1313 Merchants Bank Building, 11 South Meridian Street, Indianapolis, Indiana 46204, or at some other mutually agreeable time and place.

Definitions and Instructions

1. The term "RCRA" means the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq.*
2. The term "EPA" or "U.S. EPA" means the United States Environmental Protection Agency, and each of its offices, officers, employees, attorneys, agents, and other representatives.

3. The term "documents" means policy, guidance, reports, analyses, studies, data, memoranda, letters, opinions, and any other written or electronically-preserved materials.

4. The terms "relate to," "related to," or "relating to" means to consist of, refer to, pertain to, reflect or be in any way logically or factually connected with the matter mentioned in the request.

5. The phrase "documents related to [a specified] regulation(s), test method(s) or guidance document(s) . . ." means (a) all documents relating to the drafting or development of the cited regulation, test method or guidance document; (b) all documents relating to the drafting or development of any proposed, subsequent, or superseded regulation, test method or guidance document that addresses the same subject matter as the cited regulation, test method or guidance document; (c) all documents that relate to the interpretation of the cited regulation, test method or guidance document or any proposed, subsequent, or superseded regulation, test method or guidance document that addresses the same subject matter as the cited regulation, test method or guidance document; and (d) all documents that analyze, criticize, or explain the interpretation or meaning of the cited regulation, test method or guidance document or any proposed, subsequent, or superseded regulation, test method or guidance document that addresses the same subject matter as the cited regulation, test method or guidance document.

6. The plural shall include the singular and the singular shall include the plural. Any reference to a male pronoun shall constitute reference to a female pronoun and vice versa.

Requests for Production of Documents

REQUEST NO. 1: Produce all notices concerning this matter provided to the State of Indiana pursuant to 42 U.S.C. § 6928(a)(2).

REQUEST NO. 2: Produce all documents related to the regulations at 40 C.F.R. § 261.24 (toxicity characteristic).

REQUEST NO. 3: Produce all documents related to Appendix II to 40 C.F.R. Part 261 and/or Method 1311 Toxicity Characteristic Leaching Procedure (TCLP).

REQUEST NO. 4: Produce all documents related to 40 C.F.R. § 261.24 (the designation of chromium as the hazardous waste No. D007); 40 C.F.R. Part 261, Appendix VIII (listing of chromium as a hazardous constituent); and 40 C.F.R. § 261.4(b)(6) (exclusion of certain chromium wastes).

REQUEST NO. 5: Produce all documents related to the following EPA test methods:

- a) SW-846 Method 7000
- b) SW-846 Method 7190
- c) SW-846 Method 6010
- d) Method 218.1

REQUEST NO. 6: Produce all documents related to Test Methods for Evaluating Solid Waste, SW-846 (3d ed., November 1986), Chapter 1.

REQUEST NO. 7: Produce all documents related to Test Methods for Evaluating Solid Waste, SW-846 (3d ed., November 1986), Chapter 9.

REQUEST NO. 8: Produce all documents related to the history, development and interpretation of the EPA policy regarding the "Method of Standard Additions" and the matrix spike ("Method of Known Additions") as described in, *e.g.*, 58 Fed. Reg. 46046 (August 31, 1993).

REQUEST NO. 9: Produce all documents related to 40 C.F.R. § 262.11

(hazardous waste determination).

REQUEST NO. 10: Produce all documents related to 40 C.F.R. § 260.10

(definition of the term "representative sample").

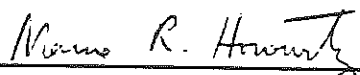
REQUEST NO. 11: Produce all documents relating to administrative and/or civil actions commenced in the last five (5) years by the U.S. EPA Region V or by the United States on behalf of U.S. EPA Region V that arise out of or relate to alleged violations of 40 C.F.R. § 262.11, 40 C.F.R. § 262.12, 42 U.S.C. § 6930(a), 40 C.F.R. § 265.11, 40 C.F.R. § 270.10, 42 U.S.C. § 6925, and/or 40 C.F.R. Part 265, subparts B, C, D, E, G, H, or L. The scope of this request is limited to the complaints and amendments thereto, consent orders, consent decrees, final orders, and penalty calculations related thereto.

REQUEST NO. 12: Produce all documents related to development, scope and interpretation of the 1990 RCRA Penalty Policy, including but not limited to (1) gravity component; (2) economic benefit; (3) ability to pay; and (4) other adjustment factors.

REQUEST NO. 13: Produce all documents documenting or otherwise related to the compliance of the U.S. EPA with the Paperwork Reduction Act of 1980 with respect to the following regulations during the period September 29, 1990 to the present: 40 C.F.R. § 262.12; 40 C.F.R. § 270.10; 40 C.F.R. Part 265, subparts B, C, D, E, G, H, and L.

REQUEST NO. 14: Produce all documents related to the assessment of quality assurance/quality control at NET Midwest, Inc., including but not limited to audits, evaluations, and reports.

Respectfully submitted,



Marcie R. Horowitz (Attorney No. 15761-49)

BARNES & THORNBURG
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204

Attorney for Hoosier Spline Broach
Corporation

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of "Respondent's First Request for Production of Documents" has been served this 12th day of April, 1994, by depositing a copy of the same in the United States mail, first class postage prepaid and properly addressed to the following counsel of record:

John Tielsch, Esquire
Assistant Regional Counsel (CS-3T)
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590



Marcie R. Horowitz



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

April 5, 1994

Marcie R. Horowitz
Barnes & Thornburg
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204

Re: In the Matter of Hoosier Spline Broach Corp.
Docket No. V-W-16-93

Dear Ms. Horowitz:

In the Prehearing Exchange submitted by Hoosier Spline Broach Corporation an "inability to pay" claim was asserted for the first time. In order for U.S. EPA to analyze this claim and to prepare witnesses and testimony regarding it, we will need to review substantially more documentation than the two years of unaudited financial statements provided as exhibits in the Prehearing Statement. Therefore, I request that the following material relating to the Respondent's ability to pay a penalty be supplied as soon as possible. For each item, except as otherwise noted, the request encompasses the five most recent fiscal or calendar years.

1. The Corporation's Federal and state income tax returns, including all attachments and schedules.
2. Audited financial statements, including all footnotes, attachments, and worksheets.
3. Interim financial statements (including trial balances) for the period from the end of the last fiscal year to the end of the most current month.
4. Federal and state income tax returns, including all attachments, for each individual who is either an officer, or who owns more than five percent of the outstanding stock of the Corporation.
5. Current loan agreements with banks.
6. Operating budgets for the upcoming fiscal year.
7. Details of the Corporation's reacquisition of its own common stock, as reflected in treasury stock.



8. Details of benefits paid by the Corporation for all officers, directors and shareholders (automobile, health, life insurance, etc.)

9. Details of advances to officers, directors and shareholders and payments received from officers, directors, and shareholders.

10. Current fixed asset listing showing book value and fair market value of assets.

You have asserted a claim of confidential business information for those financial statements already submitted as part of the Prehearing Exchange. I assume the same claim will be made for those documents supplied in response to this request, and they will be so treated to the extent allowed by law.

Sincerely yours,



John H. Tielsch
Assistant Regional Counsel

cc: Thad Slaughter



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

March 25, 1994

Marcie R. Horowitz
Barnes & Thornburg
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204

Re: In the Matter of Hoosier Spline Broach Corp.
Docket No. V-W-16-93

Dear Ms. Horowitz:

Enclosed is U.S. EPA's Prehearing Statement in compliance with Judge Vanderheyden's Order of November 15, 1993. As we agreed by telephone yesterday, I am not enclosing copies of those exhibits which you already possess. Therefore, the attachments to your copy of U.S. EPA's Prehearing Statement consist only of the exhibits numbered CX 3A through 3T and the Penalty Computation Worksheets. As soon as I receive prints of the photographs I will provide them to you. Please advise if you require copies of any of the other exhibits.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "John H. Tielsch".

John H. Tielsch
Assistant Regional Counsel

cc: Regional Hearing Clerk (5MFA-14)

Frank W. Vanderheyden
Administrative Law Judge
U.S. Environmental Protection Agency
401 M Street, S.W.
Mail Code 1900
Washington, D.C. 20460



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BARNES & THORNBURG

Marcie R. Horowitz
(317) 231-7519

1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204
(317) 638-1313

TWX 810-341-3427 B&T LAW IND
Telecopier (317) 231-7433

March 24, 1994

John Tielsch, Esquire
Assistant Regional Counsel (CS-3T)
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Re: Hoosier Spline Broach Corp.
Docket No. V-W-16-93

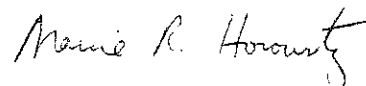
Dear John:

Enclosed please find Respondent's Prehearing Exchange as required by the Notice and Order dated November 15, 1993.

As we discussed on the phone yesterday, many of the documents listed in the prehearing exchange are already in the possession of both parties. Accordingly, I am only providing you with copies of RX 3, 5, 6, 7, 8, 20, 22, 23, 24, and 25, which I believe EPA does not yet have. If you need copies of any additional exhibit listed in Respondent's prehearing exchange, please let me know.

As required by paragraph 10 of the Notice and Order, please be advised that Respondent shall contest the appropriateness of the civil penalty proposed in the Complaint if it is found to have violated the Act as charged. One of the reasons that Respondent contests the appropriateness of the proposed civil penalty is its inability to pay same. As required under paragraph 10 of the Notice and Order, I am enclosing current financial data of Hoosier Spline Broach Corp. in support of this position (RX 26). Please note that this information is confidential and should be treated as "CBI protected." As I interpret the Judge's order, he does not wish to review this financial data at this time, and I have therefore not included a copy of the financial data with my submission to Judge Vanderheyden.

Sincerely,



Marcie R. Horowitz

MRH:naw
MRH01307
Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

DATE: March 1, 1994
FROM: Penny Hubbard Greene
Paralegal Specialist
TO: Thad Slaughter, RCRA
Arthur Lubin, Environmental Science Division
Tracy Barnes, IDEM
Richard Milton, IDEM
John Crawford, IDEM
Terry Clinard, IDEM
SUBJECT: Credentials checks

Credentials checks are needed for the upcoming pre-hearing exchange at the end of this month involving a RCRA administrative complaint, Hoosier Splines Broach Company.

I need the following information as soon as possible, please send fax to Penny Hubbard Greene, 312 886-7160, if you need to speak to me call 312 353-3758.

1. Whole name
2. Social Security Number
3. Date of Birth
4. Educational Background

- a. Names of Colleges
- b. Location
- c. Dates Attended
- d. Name of Degrees

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages 1

To	Thad Slaughter	From	Penny Greene
Dept./Agency	6-4460	Phone	312 358-8758
Fax #	3-4988	Fax #	312 886-7160

NBN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN RE:)
)
HOOSIER SPLINE BROACH CORPORATION) DOCKET NO. V-W-16-93
1401 TOUBY PIKE)
KOKOMO, INDIANA 46903)
)
IND 984 958 140)
)
RESPONDENT)

RESPONDENT'S PRE-HEARING EXCHANGE

Pursuant to the Notice and Order dated November 15, 1993, Respondent Hoosier Spline Broach Corp. submits the following information in compliance with the prehearing exchange requirements of 40 CFR §§ 22.19(b), (d) and 22.21(d):

1. On December 9, 1993, Respondent submitted to U.S. EPA various sampling and other data in an effort to promote the possible settlement of this matter. On December 13, 1993, the parties conducted an informal settlement conference in Chicago, Illinois.
2. After conclusion of the settlement conference, EPA requested certain additional information from Respondent, which was provided by letter of Respondent's counsel dated December 23, 1993.
3. EPA advised both the Respondent and the Administrative Law Judge that it would evaluate the additional information provided by Respondent and would reconsider both the allegations of the complaint and the calculation of the penalty. See Status Report filed December 14, 1993. On this basis, the parties requested and were

granted a 30-day extension in which to conduct the prehearing exchange. *See* Letter from Marcie R. Horowitz to Judge Vanderheyden dated January 25, 1994. On February 24, 1994, Complainant sought, and was granted, an additional 30-day extension. Throughout this period, EPA has advised Respondent on numerous occasions that it was working to reconsider the Complaint and penalty and that its response to Respondent was imminent. To date, however, EPA has not advised Respondent of its position regarding reconsideration of the Complaint and penalty.

4. Because of the ongoing settlement discussions, neither party has conducted discovery apart from the exchange of documents noted in paragraphs 1 and 2 above. Since EPA has not advised Respondent of its position on settlement, Respondent has decided to move forward with the prehearing exchange and preparation for a hearing in this matter, and will promptly undertake additional discovery. The information provided by Respondent herein, including witness and document lists, is therefore preliminary and subject to revision or supplementation depending on the results of future discovery. Respondent will promptly update its witness and exhibit lists in accordance with the requirements of 40 CFR Part 22 as discovery proceeds.

5. The names of experts or other witnesses who may be called include:

- a. *Johnie R. Baker* will testify as to his activities in sampling of Respondent's grinding sludge, and will also testify as to the results of analyses indicating that the sludge does not exhibit the toxicity characteristic for chromium.
- b. *Leo Brausch, P.E.*, will testify as to the nature, characteristics and environmental impacts of Respondent's grinding sludge.

- c. *Douglas E. Splitstone* will testify as to the statistical basis for any conclusion regarding the characteristics of Respondent's grinding sludge.
- d. *Dr. Richard A. Queeney* will testify as to metallurgical properties and behavior of high-speed tool steel.
- e. *Tracy Barnes, Devassy Koottungal, George E. Oliver, James H. Hunt, and John D. Crawford* will testify as to the Indiana Department of Environmental Management's determinations regarding Respondent's grinding sludge.
- f. *Thad Slaughter* will testify as to the U.S. EPA's determination regarding Respondent's grinding sludge.
- g. *Beth Day and Karen Groleau* will testify as to Quality Assurance/Quality Control regarding samples analyzed by NET Midwest, Inc.
- h. *Dr. David Peterson and Dr. Hank Mittelhauser* will testify as to Quality Assurance/Quality Control issues.
- i. *Steve Enderson* will testify as to sampling and analysis of metal constituents.
- j. *Richard Benke and Bo Lawrence* will testify as to factual matters associated with the collection of samples from Respondent's facility.
- k. *Gilbert Larison, Jeff Larison and Diane Huston* will testify as to factual matters associated with Respondent's facility, including but not limited to a description of raw materials used by Respondent; a description of the manufacturing processes undertaken at Respondent's facility; a description of waste generation and handling at the Respondent's facility; and Respondent's ability to pay the proposed fine.

- l. *Jasbinder Singh* will testify about economic benefit.
- m. *William A. Hill, Frank H. Mullen, Carl E. Stroud, Roberta Genova, and Richard T. Barber* will testify regarding specifications of steel supplied to Respondent.
- n. *Charles E. Madden and John B. Lechner* will testify as to Respondent's ability to pay any proposed penalty.
- o. *Mark Lenz* will testify as to analysis of tool steel sludges.
- p. Person(s) to be identified from U.S. EPA Region V with expertise in sampling methodology and statistical evaluation of environmental samples will testify as to these subjects.
- q. Person(s) to be identified from U.S. EPA Region V with expertise in Quality Assurance/Quality Control will testify as to these subjects.
- r. Person(s) to be identified from U.S. EPA Region V with expertise in the Toxicity Characteristic Leaching Procedure will testify as to that subject.
6. Documents and Exhibits that may be submitted into evidence include:
 - a. Special Waste Certification Application filed by Hoosier Spline Broach Corp. on October 28, 1991. (RX 1)
 - b. Letter from George E. Oliver to Gilbert Larison with attachment, dated January 9, 1991, denying approval for Special Waste Certification. (RX 2)
 - c. IDEM Special Projects Certification Worksheet dated November 27, 1991. (RX 3)

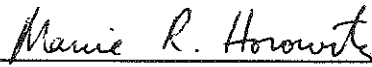
- d. Letter dated December 8, 1991, with attachments, from Beth Day to Dick Benke regarding Quality Control information for TCLP chrome analysis of samples 30267 and 36781, NET Midwest, Inc. (RX 4)
- e. Letter dated Sept. 2, 1993, with attachments, from Beth Day to Hoosier Spline Broach Corp. (RX 5)
- f. Responses to FOIA requests submitted by Barnes & Thornburg seeking information regarding broach manufacturers.
 - (1) Response from EPA Region V (RX 6).
 - (2) Response from EPA Region IV (RX 7).
 - (3) Response from Michigan Department of Natural Resources (RX 8).
- g. Laboratory results and corresponding QA/QC documentation.
 - (1) NET sample dated October 17, 1990 (RX 9).
 - (2) NET sample dated April 1, 1991 (RX 10).
 - (3) biological & environmental control laboratories sample dated September 11, 1991 (RX 11).
 - (4) biological & environmental control laboratories sample dated September 24, 1991 (RX 12).
 - (5) biological & environmental control laboratories sample dated July 7, 1992 (RX 13).

- (6) biological & environmental control laboratories sample dated July 20, 1992 (RX 14).
- (7) Sherry Laboratories samples dated July 24, 1992 (RX 15).
- (8) Chemical Waste Management sample dated May 12, 1993 (RX 16).
- (9) Security Resource Management samples dated July 22, 1993 (RX 17).
- (10) Heritage Laboratories, Inc. sample dated July 30, 1993 (RX 18).
- (11) Heritage Laboratories, Inc. sample dated July 30, 1993 (RX 19).
- (12) Heritage Laboratories, Inc. samples dated September 24, 1993 (included in RX 21).
- (13) Heritage Laboratories, Inc. samples dated October 6, 1993 (included in RX 21).
- (14) Heritage Laboratories, Inc. samples dated October 14, 1993 (included in RX 21).
- (15) Heritage Laboratories, Inc. samples dated October 24, 1993 (included in RX 21).
- (16) Results of future sampling events, if any.

- h. Letter from Craig G. Hogarth to Marcie Horowitz dated December 21, 1993, attaching results of performance studies for Heritage Laboratories, Inc. (RX 20)
- i. Report entitled Waste Sampling and Characterization Report dated December 6, 1993, prepared by SEACOR, and all exhibits and attachments to said Report. (RX 21)
- j. Letter from Frank H. Mullen to Jeff Larison dated November 1, 1993. (RX 22)
- k. Letter from Carl E. Stroud to Jeff Larison dated November 15, 1993. (RX 23)
- l. Letter from Roberta Genova to Jeff Larison dated December 3, 1993. (RX 24)
- m. Letter from Richard T. Barber to Jeff Larison dated November 8, 1993. (RX 25)
- n. All applicable IDEM records.
- o. All applicable U.S. EPA records, guidance, memoranda, and regulations.
- p. All exhibits identified in U.S. EPA's prehearing exchange.
- q. Current Financial Statements of Hoosier Spline Broach Corp. (RX 26) and other financial data regarding Respondent that may be required by EPA to establish inability to pay any proposed penalty.
[Business Confidential - C.B.I. Protected]

5. Hearing Location. Hoosier Spline Broach Corp. requests that the hearing be held in Indianapolis, Indiana. That location is close to Kokomo, Indiana, where Respondent resides and conducts its business, but is more accessible to persons who must travel by airplane to attend the hearing. Further, many of Respondent's witnesses reside in and around the Indianapolis area. In the alternative, Chicago, Illinois would be an acceptable location.

Respectfully submitted,



Marcie R. Horowitz (Attorney No. 15761-49)

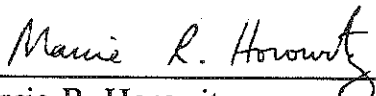
BARNES & THORNBURG
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204

Attorney for Hoosier Spline Broach
Corporation

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of "Respondent's Pre-hearing Exchange" has been served this 24th day of March, 1994, by depositing a copy of the same in the United States mail, first class postage prepaid and properly addressed to the following counsel of record:

John Tielsch, Esquire
Assistant Regional Counsel (CS-3T)
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590



Marcie R. Horowitz

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of)
)
HOOSIER SPLINE BROACH CORP.,) Docket No. V-W-16-93
)
Respondent)

NOTICE AND ORDER

PLEASE TAKE NOTICE that the subject matter under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. (Act), has been forwarded to the Office of Administrative Law Judges (OALJ), and the undersigned has been designated to conduct civil penalty proceedings set out in 42 U.S.C. § 6928. Pursuant to the Rules of Practice (Rules), 40 C.F.R. § 22.21, the parties were advised previously of this designation. Correspondence with, or service upon, the undersigned shall be directed to:

Frank W. Vanderheyden
Administrative Law Judge
U.S. Environmental Protection Agency
401 M Street, S.W.
Mail Code 1900
Washington, D.C. 20460

The office telephone number of the undersigned is (202) 260-3325 and the fax number of the OALJ is (202) 260-3720.

The appropriate section of the Rules, 40 C.F.R. § 22.18(a), encourages settlement, and specifically states that the respondent may confer with the complainant (U.S. Environmental Protection Agency) concerning settlement, whether or not the respondent has requested a hearing.

IT IS ORDERED that:

1. In the interest of paper conservation and reducing the size of files, fax communications, followed by hard copies, shall not be used in corresponding with the undersigned. An original hard copy is all that is required and demanded. The fax shall only be used in extenuating circumstances.

2. A party filing a motion for extension of time, a motion for postponement of a hearing, or any other procedural motion must first contact the other party to determine whether there is any objection to the motion, and must state in the motion whether the other party has an objection. Motions for extensions of time shall be made orally to the Office of Administrative Law Judges, and they will be ruled upon orally.

3. All future pleadings to be double spaced with pica-like (large, 10-pitch) type, in the style of this notice and order.

4. To the extent not done already, the parties shall furnish their respective fax numbers in their first written communication to the office of the undersigned.

5. Counsel for complainant shall serve a status report, no later than December 14, 1993, concerning whether or not this matter has been settled. If the case is not settled¹ by this date, compliance by the parties to the paragraphs "8," "9," and "10" below shall be made no later than January 25, 1994. The original

¹ Even if the matter is settled, and unless and until a consent agreement and order are executed in final form, the parties are still obligated to submit their prehearing exchanges unless an extension is granted by the undersigned for submission of same.

of the response and all other documents, shall be sent to the Regional Hearing Clerk and copies, with any attachments, shall be sent to the opposing party. In this regard see 40 C.F.R. § 22.05. Following the aforementioned exchange between the parties, they will be advised by subsequent orders including, but not limited to, marking this matter for a prehearing conference.

6. Only the covering letters between the parties concerning the prehearing exchange and that information required by "8(a)" and "8(d)" below shall be sent to the undersigned. The parties shall be notified in the event the undersigned desires to receive more of the prehearing exchange.

7. The parties shall take precautions in any settlement negotiations to insulate and shield the undersigned, or his staff, from any knowledge concerning money amounts mentioned therein. This can best be accomplished by being certain the undersigned does not receive a copy of any communications reflecting settlement amounts.

8. In accordance with §§ 22.19(b)(d) and 22.21(d) of the Rules, that the following prehearing exchange take place between both parties: Each party shall make available to the other (a) the names of the expert or other witnesses intended to be called, together with a brief narrative summary of their expected testimony, and the number of exhibits intended to be offered into evidence; (b) copies of all documents and exhibits which each party intends to introduce into evidence; (c) that these documents and exhibits shall be identified as "Complainant's," "Respondent's" or

"Joint" exhibits, as appropriate, numbered with Arabic numerals. For example, "CX 1," "RX 1" or "JX 1"; and (d) the views of each party concerning the desired location of the hearing-in-chief.

9. Complainant, to the extent not already done, shall submit to respondent: (a) A copy of the inspection report, and all other documentary evidence to support the complaint; (b) Show the rationale concerning how the proposed civil penalty in the complaint was calculated and how it conforms to any applicable Civil Penalty or Enforcement Policies of the U.S. Environmental Protection Agency; and (c) Furnish its views, with some particularity, concerning the gravity of the alleged violations of the Act including the actual or potential harm to man and the environment resulting from respondent's purported illegal conduct. Also to be included is the history, if any, of respondent's compliance with the Act.

10. Respondent, to the extent not already done, advise complainant whether or not it is contesting the appropriateness of the civil penalty proposed in the complaint if it is found to have violated the Act as charged. If one of the reasons is respondent's alleged inability to pay same, it shall furnish current financial data or other acceptable documentation in support of its position.

11. Beginning one month following January 25, 1994, complainant shall submit bimonthly status reports until a consent agreement has been fully executed in this matter or a hearing date is set.

12. Following the prehearing exchanges, any further discovery between the parties shall be carried out in a voluntary manner with a minimum of intervention by the undersigned. To illustrate, should a request for discovery be made, and such request be declined, the requesting party then, and only then, may turn to the undersigned with a motion to compel in accordance with 40 C.F.R. § 22.19(f), with particular reference to its subsections.

13. Until a provision is made in the current Rules, or unless directed otherwise by the undersigned, a party's response to any written motion must be filed within ten (10) days after service of such motion. Unless ordered otherwise, there shall be no further pleadings beyond the response by any party.

14. Any motions, including those to compel discovery, or those for an accelerated decision pursuant to 40 C.F.R. § 22.20, must be served within sufficient time which, in the opinion of the undersigned, will not cause delay in, or interfere with, the scheduled hearing date. Failure to observe this may result in such motions being denied.



Frank W. Vanderheyden
Administrative Law Judge

Dated: _____



IN THE MATTER OF HOOSIER SPLINE BROACH CORP., Respondent,
Docket No. V-W-16-93

Certificate of Service

I certify that the foregoing Notice and Order, dated
11/15/93, was sent this day in the following manner to
the below addressees:

Original by Regular Mail to:

Sheila M. Byrd
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region V
77 West Jackson Boulevard
Chicago, IL 60604-3590

Copy by Regular Mail to:

Attorney for Complainant:

John Tielsch, Esquire
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region V
77 West Jackson Boulevard
Chicago, IL 60604-3590

Attorney for Respondent:

Marcie R. Horowitz, Esquire
BARNES & THORNBURG
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, IN 46204

Marion Walzel
Marion Walzel
Legal Staff Assistant

Dated: Nov. 16, 1993

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF)	
)	
Hoosier Spline Broach Corp.,)	Dkt. No. V-W-16-93
)	
Respondent)	
)	

COMPLAINANT'S PREHEARING STATEMENT

Complainant, the Associate Division Director of the Office of RCRA, Waste Management Division, Region 5, U.S. EPA, by his attorney, submits to the Administrative Law Judge this Prehearing Statement pursuant to the Notice and Order of November 15, 1993 (the Order).

I. WITNESSES

Listed below are the names of the expert and other witnesses whom Complainant may call to testify, together with brief narrative summaries of their expected testimony.

1. Thad Alan Slaughter

Mr. Slaughter is a geologist with the RCRA Enforcement Branch, U.S. EPA Region 5. He is expected to testify about the factual and regulatory bases for the allegations in the Complaint, the calculation of the penalty in accordance with the RCRA Civil Penalty Policy of October 1990 ("Penalty Policy"), the

RCRA § 3007 information request, and the TCLP test. In addition, he may testify as a rebuttal witness.

2. Joseph Boyle

Mr. Boyle is the Chief of the RCRA Enforcement Branch, U.S. EPA Region 5. He is expected to testify about the requirements of applicable CFR Part 40 regulations.

3. Arthur N. Lubin

Mr. Lubin is a Statistician with the Monitoring and Quality Assurance Branch of the Environmental Sciences Division, U.S. EPA Region 5. He is expected to testify regarding the validity of the statistical analysis of samples taken from the waste pile at the Respondent's facility.

4. Tracey Barnes

Ms. Barnes is a scientist with the Indiana Department of Environmental Management (IDEM). She is expected to testify about IDEM's treatment of Respondent's Special Waste Application and about the sampling data submitted with that application.

5. John Crawford

Mr. Crawford is an inspector with IDEM. He is expected to testify about the inspection of Respondent's facility which he conducted on February 21 and 22, 1992.

6. Terry Clinard

Mr. Clinard is an inspector with IDEM. He is expected to testify about the inspection of Respondent's facility which he conducted on February 21 and 22, 1992.

7. Gilbert Larison

Mr. Larison is President of Respondent. He is expected to testify about the manufacturing processes at the facility, the sampling conducted of the waste pile, and the handling of the materials contained in the waste pile.

8. Michael DeRosa

Mr. DeRosa is an Environmental Protection Specialist with the RCRA Enforcement Branch, U.S. EPA, Region 5. He is expected to testify about the adequacy of the quality assurance and quality control performed for testing of samples taken from the facility.

9. Beth Day

Ms. Day is a Quality Assurance Coordinator employed by National Environmental Testing, Inc. (NET). She is expected to testify about the quality assurance and quality control procedures performed on the samples taken from the waste pile.

In addition, Complainant intends to supplement this list with the names of other witnesses from whom testimony may be required due to the discovery of additional evidence prior to hearing, to

analyze any claim made by Respondent of an inability to pay a penalty, or for rebuttal. In the event any other experts are retained, or any other witnesses contemplated, Complainant will promptly notify the Court and Respondent and promptly amend this Prehearing Statement.

II. DOCUMENTS AND EXHIBITS INTENDED TO BE INTRODUCED

Listed below are those documents and exhibits which Complainant intends to introduce into evidence. The documents are attached to the original of this Prehearing Statement filed with the Regional Hearing Clerk and to the copy of the Prehearing Statement provided to Respondent. The exhibits are marked in accordance with the instructions in the Order.

CX 1: IDEM RCRA Land Disposal Restrictions Inspection Report dated February 21, 1992

CX 2: IDEM TSD-RCRA inspection Report dated February 21, 1992

CX 3A-T: Twenty photographs taken at the facility by IDEM inspectors on February 20 and 21, 1992. The photocopies currently attached will be replaced by prints as soon as the prints are received from IDEM.

CX 4A: RCRA section 3007 Information Request from Joseph M. Boyle to Gilbert Larison, dated June 26, 1992.

- CX 4B: Response to RCRA section 3007 Information Request from Gilbert Larison to U.S. EPA, attention Thad Slaughter, dated August 26, 1992.
- CX 5: Special Waste Certification Application, dated October 28, 1991.
- CX 6: Letter, with attachments, from Beth Day to Dick Benke, regarding "Quality Control Information for TCLP Chrome Analysis of Samples 30267 and 36781 (WMA 035621)", dated December 8, 1991.
- CX 7: Letter from George E. Oliver, IDEM, to Gilbert Larison regarding "Disposal of Grinding Sludge", with RCRA Statistical Analysis of Samples Worksheet, dated January 9, 1993.
- CX 8: 1990 RCRA Penalty Policy
- CX 9: IDEM Special Waste Regulations, 329 IAC 2-21-1 through 2-21-16.

III. DESIRED LOCATION OF THE HEARING-IN-CHIEF

Chicago, Illinois or Indianapolis, Indiana.

IV. ADDITIONAL SUBMISSIONS TO RESPONDENT

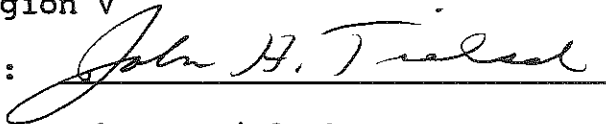
Pursuant to paragraph 9(a) of the Order, Complainant is providing the inspection report and all other documentary evidence to support the complaint in the exhibits listed above.

Pursuant to paragraph 9(b) and (c) of the Order, Complainant is providing to Respondent the attached Penalty Computation Worksheets.

RESPECTFULLY SUBMITTED,

Norman Niedergang
Associate Division Director
Office of RCRA, Waste Management Division
Complainant
U.S. Environmental Protection Agency
Region V

BY:



John H. Tielsch
Assistant Regional Counsel

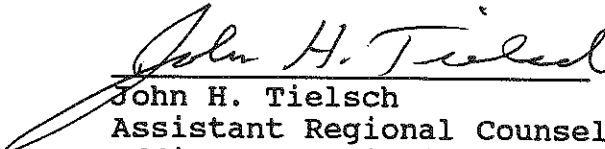
CERTIFICATE OF SERVICE

I hereby certify that the original of this Prehearing Statement was filed with the Regional Hearing Clerk, Region 5, on this 25th day of March, 1994, and copies sent by first class mail, to:

Frank W. Vanderheyden
Administrative Law Judge
U.S. Environmental Protection Agency
401 M Street, S.W.
Mail Code 1900
Washington, D.C. 20460

Marcie R. Horowitz
Barnes & Thornburg
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204

Dated: 3/25/94


John H. Tielsch
Assistant Regional Counsel
Office of Regional Counsel
CS-3T
U.S. Environmental Protection
Agency, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
(312) 353-7447
(312) 886-7160 (fax)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

US ENVIRONMENTAL
PROTECTION AGENCY
REGION V

IN THE MATTER OF

Hoosier Spline Broach Corp.,

Respondent

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Dkt. No. V-W-16-93

STATUS REPORT

Complainant, the Acting Associate Division Director of the Office of RCRA, Waste Management Division, Region 5, U.S. EPA, by his attorney, submits to the Administrative Law Judge this status report pursuant to the Administrative Law Judge's Notice and Order of November 15, 1993.

1. The parties conducted an informal settlement conference in Chicago on December 13, 1993.

2. During the conference the parties discussed Respondent's operations and the circumstances surrounding the events described in the complaint. The parties discussed the allegations of the complaint, the answer and the affirmative defenses in detail. The parties also reviewed and discussed additional TCLP sampling results provided to U.S. EPA by Respondent on December 10, 1993.

3. At the conclusion of the meeting U.S. EPA requested that the Respondent provide quality assurance and other supporting documentation for the additional TCLP sample results.

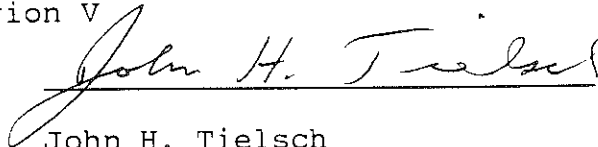
4. After receipt and review of the additional documentation U.S. EPA will reconsider both the allegations of the complaint and the calculation of the penalty. The parties intend to conduct another meeting or telephone conference to discuss any modifications to the complaint and the penalty and to make further attempts to settle this matter.

5. Respondent has reviewed this Status Report and concurs with the statements herein.

RESPECTFULLY SUBMITTED,

Norman Niedergang
Acting Associate Division Director
Office of RCRA, Waste Management Division
Complainant
U.S. Environmental Protection Agency
Region V

BY:



John H. Tielsch
Assistant Regional Counsel


CERTIFICATE OF SERVICE

I hereby certify that the original of this Status Report was filed with the Regional Hearing Clerk, Region 5, on this 14th day of December 1993, and copies sent by certified mail, return receipt requested, to:

Frank W. Vanderheyden
Administrative Law Judge
U.S. Environmental Protection Agency
401 M Street, S.W.
Mail Code 1900
Washington, D.C. 20460

Marcie R. Horowitz
Barnes & Thornburg
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204

Date: 12/14/93


John H. Tielsch
Assistant Regional Counsel
Office of Regional Counsel
CS-3T
U.S. Environmental Protection
Agency, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
(312) 353-7447

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGION V

IN THE MATTER OF)
)
Hoosier Spline Broach Corp.,) Dkt. No. V-W-16-93
)
)
Respondent)
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STATUS REPORT

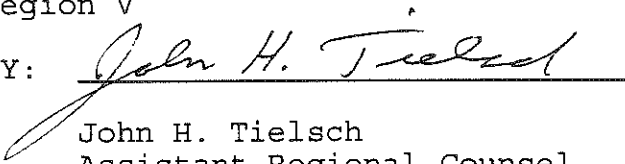
Complainant, the Acting Associate Division Director of the Office of RCRA, Waste Management Division, Region 5, U.S. EPA, by his attorney, submits to the Administrative Law Judge this status report pursuant to the Administrative Law Judge's Notice and Order of November 15, 1993.

1. On August 10, 1994, Complainant mailed to Respondent responses and objections to Respondent's April 16, 1994, informal discovery requests.
2. On that date Complainant also mailed to Respondent a new settlement proposal in the form of a proposed Consent Agreement and Final Order (CAFO).
3. In a telephone call on September 23, 1994, Respondent's counsel advised Complainant's counsel that the parties remained far apart and that this matter should be scheduled for hearing.

RESPECTFULLY SUBMITTED,

Norman Niedergang
Acting Associate Division Director
Office of RCRA, Waste Management Division
Complainant
U.S. Environmental Protection Agency
Region V

BY:


John H. Tielsch
Assistant Regional Counsel

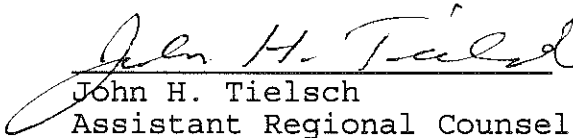
CERTIFICATE OF SERVICE

I hereby certify that the original of this Status Report was filed with the Regional Hearing Clerk, Region 5, on this 23rd day of September 1994, and copies sent by certified mail, return receipt requested, to:

Frank W. Vanderheyden
Administrative Law Judge
U.S. Environmental Protection Agency
401 M Street, S.W.
Mail Code 1900
Washington, D.C. 20460

Marcie R. Horowitz
Barnes & Thornburg
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204

Date: 9/23/94


John H. Tielsch
Assistant Regional Counsel
Office of Regional Counsel
CS-29A
U.S. Environmental Protection
Agency, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
(312) 353-7447

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V
PROTECTION AGENCY
REGION V

IN THE MATTER OF

Hoosier Spline Broach Corp.,

Respondent

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Dkt. No. V-W-16-93

STATUS REPORT

Complainant, the Acting Associate Division Director of the Office of RCRA, Waste Management Division, Region 5, U.S. EPA, by his attorney, submits to the Administrative Law Judge this status report pursuant to the Administrative Law Judge's Notice and Order of November 15, 1993.

1. The parties completed the prehearing exchange on March 25, 1994..
2. On April 5, 1994, Complainant requested additional financial information from Respondent due to Respondent's assertion of an inability to pay the penalty which it raised in its prehearing exchange. Respondent provided additional financial information to Complainant on May 12, 1994. Complainant is in the process of analyzing this information, which may have a bearing on the settlement of this matter.

3. On April 12, 1994 Respondent served discovery requests on Complainant. Complainant is continuing to gather information and considering its response. Complainant hopes to have a response to Respondent within the next two weeks.

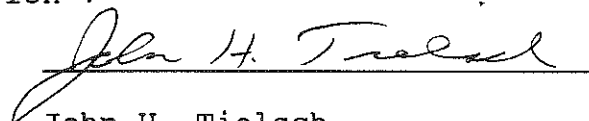
4. Complainant continues to reconsider both the allegations of the complaint and the calculation of the penalty in light of the new information received. Complainant intends to present a new settlement proposal with modifications to the complaint and the penalty within two weeks. In addition, settlement discussions may be impacted on conclusion of Complainant's analysis regarding Respondent's claim of inability to pay the penalty.

5. Respondent has reviewed this Status Report and concurs with the statements herein.

RESPECTFULLY SUBMITTED,

Norman Niedergang
Acting Associate Division Director
Office of RCRA, Waste Management Division
Complainant
U.S. Environmental Protection Agency
Region V

BY:



John H. Tielsch
Assistant Regional Counsel

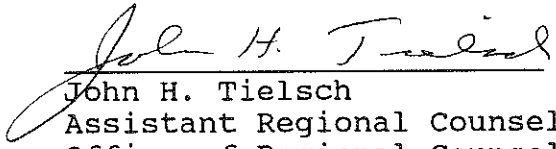
CERTIFICATE OF SERVICE

I hereby certify that the original of this Status Report was filed with the Regional Hearing Clerk, Region 5, on this 25th day of May 1994, and copies sent by certified mail, return receipt requested, to:

Frank W. Vanderheyden
Administrative Law Judge
U.S. Environmental Protection Agency
401 M Street, S.W.
Mail Code 1900
Washington, D.C. 20460

Marcie R. Horowitz
Barnes & Thornburg
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204

Date: 5/25/94


John H. Tielsch
Assistant Regional Counsel
Office of Regional Counsel
CS-3T
U.S. Environmental Protection
Agency, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
(312) 353-7447

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN RE:

HOOSIER SPLINE BROACH CORPORATION
1401 TOUBY PIKE
KOKOMO, INDIANA 46903

IND 984 958 140

RESPONDENT

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DOCKET NO. V-W-16-93

RESPONDENT'S PRE-HEARING EXCHANGE

Pursuant to the Notice and Order dated November 15, 1993, Respondent Hoosier Spline Broach Corp. submits the following information in compliance with the prehearing exchange requirements of 40 CFR §§ 22.19(b), (d) and 22.21(d):

1. On December 9, 1993, Respondent submitted to U.S. EPA various sampling and other data in an effort to promote the possible settlement of this matter. On December 13, 1993, the parties conducted an informal settlement conference in Chicago, Illinois.
2. After conclusion of the settlement conference, EPA requested certain additional information from Respondent, which was provided by letter of Respondent's counsel dated December 23, 1993.
3. EPA advised both the Respondent and the Administrative Law Judge that it would evaluate the additional information provided by Respondent and would reconsider both the allegations of the complaint and the calculation of the penalty. *See* Status Report filed December 14, 1993. On this basis, the parties requested and were

granted a 30-day extension in which to conduct the prehearing exchange. See Letter from Marcie R. Horowitz to Judge Vanderheyden dated January 25, 1994. On February 24, 1994, Complainant sought, and was granted, an additional 30-day extension. Throughout this period, EPA has advised Respondent on numerous occasions that it was working to reconsider the Complaint and penalty and that its response to Respondent was imminent. To date, however, EPA has not advised Respondent of its position regarding reconsideration of the Complaint and penalty.

4. Because of the ongoing settlement discussions, neither party has conducted discovery apart from the exchange of documents noted in paragraphs 1 and 2 above. Since EPA has not advised Respondent of its position on settlement, Respondent has decided to move forward with the prehearing exchange and preparation for a hearing in this matter, and will promptly undertake additional discovery. The information provided by Respondent herein, including witness and document lists, is therefore preliminary and subject to revision or supplementation depending on the results of future discovery. Respondent will promptly update its witness and exhibit lists in accordance with the requirements of 40 CFR Part 22 as discovery proceeds.

5. The names of experts or other witnesses who may be called include:

a. *Johnie R. Baker* will testify as to his activities in sampling of Respondent's grinding sludge, and will also testify as to the results of analyses indicating that the sludge does not exhibit the toxicity characteristic for chromium.

b. *Leo Brausch, P.E.*, will testify as to the nature, characteristics and environmental impacts of Respondent's grinding sludge.

- c. *Douglas E. Splitstone* will testify as to the statistical basis for any conclusion regarding the characteristics of Respondent's grinding sludge.
- d. *Dr. Richard A. Queeney* will testify as to metallurgical properties and behavior of high-speed tool steel.
- e. *Tracy Barnes, Devassy Koottungal, George E. Oliver, James H. Hunt, and John D. Crawford* will testify as to the Indiana Department of Environmental Management's determinations regarding Respondent's grinding sludge.
- f. *Thad Slaughter* will testify as to the U.S. EPA's determination regarding Respondent's grinding sludge.
- g. *Beth Day and Karen Groleau* will testify as to Quality Assurance/Quality Control regarding samples analyzed by NET Midwest, Inc.
- h. *Dr. David Peterson and Dr. Hank Mittelhauser* will testify as to Quality Assurance/Quality Control issues.
- i. *Steve Enderson* will testify as to sampling and analysis of metal constituents.
- j. *Richard Benke and Bo Lawrence* will testify as to factual matters associated with the collection of samples from Respondent's facility.
- k. *Gilbert Larison, Jeff Larison and Diane Huston* will testify as to factual matters associated with Respondent's facility, including but not limited to a description of raw materials used by Respondent; a description of the manufacturing processes undertaken at Respondent's facility; a description of waste generation and handling at the Respondent's facility; and Respondent's ability to pay the proposed fine.

- l. *Jasbinder Singh* will testify about economic benefit.
- m. *William A. Hill, Frank H. Mullen, Carl E. Stroud, Roberta Genova, and Richard T. Barber* will testify regarding specifications of steel supplied to Respondent.
- n. *Charles E. Madden and John B. Lechner* will testify as to Respondent's ability to pay any proposed penalty.
- o. *Mark Lenz* will testify as to analysis of tool steel sludges.
- p. Person(s) to be identified from U.S. EPA Region V with expertise in sampling methodology and statistical evaluation of environmental samples will testify as to these subjects.
- q. Person(s) to be identified from U.S. EPA Region V with expertise in Quality Assurance/Quality Control will testify as to these subjects.
- r. Person(s) to be identified from U.S. EPA Region V with expertise in the Toxicity Characteristic Leaching Procedure will testify as to that subject.
- 6. Documents and Exhibits that may be submitted into evidence include:
 - a. Special Waste Certification Application filed by Hoosier Spline Broach Corp. on October 28, 1991. (RX 1)
 - b. Letter from George E. Oliver to Gilbert Larison with attachment, dated January 9, 1991, denying approval for Special Waste Certification. (RX 2)
 - c. IDEM Special Projects Certification Worksheet dated November 27, 1991. (RX 3)

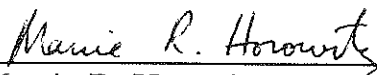
- d. Letter dated December 8, 1991, with attachments, from Beth Day to Dick Benke regarding Quality Control information for TCLP chrome analysis of samples 30267 and 36781, NET Midwest, Inc. (RX 4)
- e. Letter dated Sept. 2, 1993, with attachments, from Beth Day to Hoosier Spline Broach Corp. (RX 5)
- f. Responses to FOIA requests submitted by Barnes & Thornburg seeking information regarding broach manufacturers.
 - (1) Response from EPA Region V (RX 6).
 - (2) Response from EPA Region IV (RX 7).
 - (3) Response from Michigan Department of Natural Resources (RX 8).
- g. Laboratory results and corresponding QA/QC documentation.
 - (1) NET sample dated October 17, 1990 (RX 9).
 - (2) NET sample dated April 1, 1991 (RX 10).
 - (3) biological & environmental control laboratories sample dated September 11, 1991 (RX 11).
 - (4) biological & environmental control laboratories sample dated September 24, 1991 (RX 12).
 - (5) biological & environmental control laboratories sample dated July 7, 1992 (RX 13).

- (6) biological & environmental control laboratories sample dated July 20, 1992 (RX 14).
- (7) Sherry Laboratories samples dated July 24, 1992 (RX 15).
- (8) Chemical Waste Management sample dated May 12, 1993 (RX 16).
- (9) Security Resource Management samples dated July 22, 1993 (RX 17).
- (10) Heritage Laboratories, Inc. sample dated July 30, 1993 (RX 18).
- (11) Heritage Laboratories, Inc. sample dated July 30, 1993 (RX 19).
- (12) Heritage Laboratories, Inc. samples dated September 24, 1993 (included in RX 21).
- (13) Heritage Laboratories, Inc. samples dated October 6, 1993 (included in RX 21).
- (14) Heritage Laboratories, Inc. samples dated October 14, 1993 (included in RX 21).
- (15) Heritage Laboratories, Inc. samples dated October 24, 1993 (included in RX 21).
- (16) Results of future sampling events, if any.

- h. Letter from Craig G. Hogarth to Marcie Horowitz dated December 21, 1993, attaching results of performance studies for Heritage Laboratories, Inc. (RX 20)
- i. Report entitled Waste Sampling and Characterization Report dated December 6, 1993, prepared by SEACOR, and all exhibits and attachments to said Report. (RX 21)
- j. Letter from Frank H. Mullen to Jeff Larison dated November 1, 1993. (RX 22)
- k. Letter from Carl E. Stroud to Jeff Larison dated November 15, 1993. (RX 23)
- l. Letter from Roberta Genova to Jeff Larison dated December 3, 1993. (RX 24)
- m. Letter from Richard T. Barber to Jeff Larison dated November 8, 1993. (RX 25)
- n. All applicable IDEM records.
- o. All applicable U.S. EPA records, guidance, memoranda, and regulations.
- p. All exhibits identified in U.S. EPA's prehearing exchange.
- q. Current Financial Statements of Hoosier Spline Broach Corp. (RX 26) and other financial data regarding Respondent that may be required by EPA to establish inability to pay any proposed penalty.
[Business Confidential - CB.I. Protected]

5. Hearing Location. Hoosier Spline Broach Corp. requests that the hearing be held in Indianapolis, Indiana. That location is close to Kokomo, Indiana, where Respondent resides and conducts its business, but is more accessible to persons who must travel by airplane to attend the hearing. Further, many of Respondent's witnesses reside in and around the Indianapolis area. In the alternative, Chicago, Illinois would be an acceptable location.

Respectfully submitted,



Marcie R. Horowitz (Attorney No. 15761-49)

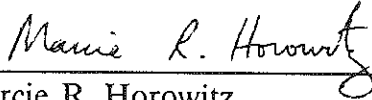
BARNES & THORNBURG
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204

Attorney for Hoosier Spline Broach
Corporation

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of "Respondent's Pre-hearing Exchange" has been served this 24th day of March, 1994, by depositing a copy of the same in the United States mail, first class postage prepaid and properly addressed to the following counsel of record:

John Tielsch, Esquire
Assistant Regional Counsel (CS-3T)
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590



Marcie R. Horowitz

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN RE:)	
)	
HOOSIER SPLINE BROACH CORPORATION)	DOCKET NO. V-W-16-93
1401 TOUBY PIKE)	
KOKOMO, INDIANA 46903)	
)	
IND 984 958 140)	
)	
RESPONDENT)	

ANSWER TO COMPLAINT AND REQUEST FOR HEARING

I.
ANSWER TO COMPLAINT

Respondent, Hoosier Spline Broach Corporation, by counsel, provides the following answer to Complainant's Complaint in this cause.

FIRST DEFENSE
Admissions and Denials

1. Paragraph 1 of Complainant's Complaint simply characterizes the nature of the Complaint, and does not contain any averments that require a response. Respondent denies any remaining averments in paragraph 1.

2. Paragraph 2 of Complainant's Complaint simply characterizes the identity of the Complainant, and does not contain any averments that require a response. Respondent is without knowledge or information sufficient to form a belief as the truth of any remaining averments in paragraph 2.

3. Respondent admits that it is the owner and operator of a spline broach manufacturing plant. The correct address of the plant is 1401 Touby Pike, Kokomo, Indiana 46903. Respondent denies any remaining averments in paragraph 3.

4. Respondent admits that it is a person as defined by Section 1004(15) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(15) and its implementing regulations. Respondent notes that the references to the Indiana Administrative Code are incorrect. Respondent denies that it owns and operates a facility that generates, treats, stores or disposes of hazardous waste, and denies any remaining averments of paragraph 4.

5. Respondent admits the averments in paragraph 5 of Complainant's Complaint, but notes that the address should be corrected to read "1401 Touby Pike, Kokomo, Indiana 46903."

6-7. Paragraphs 6-7 of Complainant's Complaint purport to paraphrase and characterize various sections of RCRA and the U.S. Environmental Protection Agency's ("EPA") RCRA regulations. Respondent admits that the various statutes and regulations cited speak for themselves, and denies any remaining averments in paragraphs 6-7.

8. Respondent is without knowledge or information sufficient to form a belief as the truth of the averments in paragraph 8 of Complainant's Complaint.

9-10. Paragraphs 9-10 of Complainant's Complaint purport to paraphrase and characterize various sections of RCRA and EPA's RCRA regulations. Respondent admits that the various statutes and regulations cited speak for themselves, and denies the remaining averments in paragraphs 9-10.

11. Respondent admits that grinding baghouse dust generated by Respondent was collected in a pile at Respondent's manufacturing plant in Kokomo, Indiana until February 22, 1992. Respondent denies that this pile constitutes a waste pile or that the manufacturing plant constitutes a facility subject to RCRA, and denies any remaining averments of paragraph 11. Respondent further questions the relevancy of the reference to "February 1990" in this cause.

12. Respondent admits that a person purporting to be an inspector from the Indiana Department of Environmental Management ("IDEM") conducted an inspection at Respondent's Kokomo plant on or about February 21, 1992. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 12 of Complainant's Complaint and, therefore, denies same.

13. Respondent denies the averments in paragraph 13 of Complainant's Complaint.

14-15. Respondent admits the averments in paragraphs 14-15 of Complainant's Complaint.

16. Respondent admits that on or about May 29, 1992 it shipped approximately twenty nine (29) tons of waste material to the CWM/CID Landfill and that such waste was accompanied by Manifests IL3685368 and IL3846747. Respondent denies that the waste was hazardous waste and further denies any remaining averments in paragraph 16.

COUNT ONE

17. Respondent incorporates by reference its responses to paragraphs 1-16 above of Complainant's Complaint as its response to paragraph 17 of Complainant's Complaint.

18. Respondent admits that it generates and has generated grinding baghouse dust in the manufacture of spline broaches for use in the automotive and other industries. Respondent denies that its manufacturing plant constitutes a facility as defined under RCRA. Respondent further questions the relevancy of the reference to "February 1990" in this cause.

19. Respondent admits that on or about November 7, 1991 it submitted analytical data for the grinding baghouse dust to IDEM's Special Waste Section for Special Waste Certification. Respondent is without knowledge or information sufficient

to form a belief as to the characterization of the data as "TCLP" data for purposes of RCRA waste characterization.

20-21. Respondent admits that on or about January 9, 1992, IDEM denied Respondent's application for Special Waste Certification. Respondent admits that IDEM's January 9, 1992 notification speaks for itself, and denies the remaining averments in paragraphs 20-21 of Complainant's Complaint.

22. Respondent admits that it is a generator of solid waste. The remainder of paragraph 22 purports to paraphrase and characterize a RCRA regulation and draws a legal conclusion to which no response is required. Respondent admits that the regulation cited speaks for itself, and denies the remaining averments of paragraph 22 of Complainant's Complaint.

23-24. Respondent denies the averments in paragraphs 23-24 of Complainant's Complaint.

25-26. Paragraphs 25-26 of Complainant's Complaint purport to paraphrase and characterize various section of RCRA and EPA's RCRA regulations. Respondent admits that the various statutes and regulations cited speak for themselves, and denies the remaining averments in paragraphs 25-26.

27. Respondent denies the averments in paragraph 27 of Complainant's Complaint, and further questions the relevancy of the reference to "February 1990" in this cause.

28. Respondent admits that it submitted a notification form pursuant to Section 3010 of RCRA on March 9, 1992. Respondent denies the remaining averments in paragraph 28.

29-30. Respondent denies the averments in paragraphs 29-30 of Complainant's Complaint.

31. Paragraph 31 of Complainant's Complaint purports to paraphrase and characterize certain sections of EPA's RCRA regulations. Respondent admits that the various regulations cited speak for themselves, and denies the remaining averments in paragraph 31.

32-33. Respondent denies the averments in paragraphs 32-33 of Complainant's Complaint.

COUNT TWO

34. Respondent incorporates by reference its responses to paragraphs 1-33 above of Complainant's Complaint as its response to paragraph 34 of Complainant's Complaint.

35-36. Paragraphs 35-36 of Complainant's Complaint purport to paraphrase and characterize various sections of RCRA and EPA's RCRA regulations. Respondent admits that the various statutes and regulations cited speak for themselves, and denies the remaining averments in paragraphs 35-36.

37. Respondent denies that its Kokomo, Indiana manufacturing plant constitutes a "facility" subject to RCRA, but admits the remaining averments in paragraph 37 of Complainant's Complaint.

38. Respondent admits that it did not file a RCRA § 3010 notification on or before October 29, 1990 and did not file a Part A application by September 25, 1990, but denies that it was under any obligation to do so. Respondent denies all remaining averments in paragraph 38 of Complainant's Complaint.

39-40. Respondent denies the averments in paragraphs 39-40 of Complainant's Complaint.

COUNT THREE

41. Respondent incorporates by reference its responses to paragraphs 1-40 above of Complainant's Complaint as its response to paragraph 41 of Complainant's Complaint.

42. Paragraph 42 of Complainant's Complaint purports to paraphrase and characterize certain sections of RCRA and EPA's RCRA regulations. Respondent admits that the various statutes and regulations cited speak for themselves, and denies the remaining averments in paragraph 42.

43-44. Respondent denies the averments in paragraphs 43-44 of Complainant's Complaint.

COUNT FOUR

45. Respondent incorporates by reference its responses to paragraphs 1-44 above of Complainant's Complaint as its response to paragraph 45 of Complainant's Complaint.

46. Paragraph 46 of Complainant's Complaint purports to paraphrase and characterize certain sections of RCRA and EPA's RCRA regulations. Respondent admits that the various statutes and regulations cited speak for themselves, and denies the remaining averments in paragraph 46.

47-48. Respondent denies the averments in paragraphs 47-48 of Complainant's Complaint.

SECOND DEFENSE

All or part of Complainant's claims are barred because of violations of the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 *et seq.*

THIRD DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

FOURTH DEFENSE

The Complainant and EPA are without jurisdiction over the subject matter of the Complaint.

FIFTH DEFENSE

All or part of Complainant's claims are barred by the applicable statute of limitations.

SIXTH DEFENSE

All or part of Complainant's claims are barred by the doctrine of laches.

SEVENTH DEFENSE

The Complaint alleges violations of federal RCRA regulations which, at times relevant hereto, were not in effect in Indiana as an authorized state. Respondent is, therefore, not subject to these federal requirements nor can it be found to have violated these federal requirements as the Complaint alleges.

EIGHTH DEFENSE

Respondent has not generated, treated, stored or disposed of any hazardous waste at its Kokomo, Indiana, manufacturing plant, and is therefore not subject to RCRA requirements with regard to the Kokomo plant. TCLP analysis of Respondent's grinding baghouse dust, utilizing EPA-approved methods and quality assurance/quality control procedures, proves that the waste is not a hazardous waste. Furthermore, Respondent has applied knowledge of the waste in light of the materials and processes used and in light of industry-wide practice to determine the nonhazardous character of the waste. Previous laboratory analyses relied upon by EPA or IDEM to infer the hazard characteristic of the waste were incorrect as a result of improper sampling protocol, lack of quality assurance, or laboratory error. Moreover, Respondent's decision to handle the waste as a hazardous waste after receipt of IDEM's Special Waste Certification denial is not determinative of the question whether such waste was, in fact, a hazardous waste.

NINTH DEFENSE

To the extent any waste generated by Respondent may have failed the TCLP test for chromium, such waste was not a representative sample of the waste generated by Respondent.

TENTH DEFENSE

To the extent that any waste generated by Respondent may have failed the TCLP test for chromium, such waste was generated in small quantities and Respondent is a conditionally exempt small quantity generator or a small quantity generator and is therefore not subject to the RCRA requirements alleged by Complainant to have been violated.

ELEVENTH DEFENSE

To the extent chromium is present in any waste generated by Respondent, such chromium is present in a form such that the waste is excluded from the definition of a hazardous waste.

TWELFTH DEFENSE

The waste alleged to have been placed in a pile on Respondent's property was not subject to wind dispersal, nor was the leachate and run-off from such pile a hazardous waste, and therefore Respondent was not subject to 40 CFR § 265.251 and § 265.253 with respect to the pile.

FACTS WHICH RESPONDENT
HOOSIER SPLINE BROACH CORPORATION
INTENDS TO PLACE AT ISSUE

1. Whether Respondent generates or generated a hazardous waste at its manufacturing plant located at 1401 Touby Pike, Kokomo, Indiana within the meaning of RCRA.
2. Whether Respondent stored or disposed of a hazardous waste at said plant within the meaning of RCRA.
3. Whether Respondent was a conditionally exempt small quantity generator or a small quantity generator within the meaning of RCRA.
4. Whether the waste placed on Respondent's property was subject to wind dispersal.
5. Whether the leachate or runoff from waste placed on Respondent's property was a hazardous waste.

II.
COMPLIANCE ORDER

Respondent denies that Complainant is entitled to impose or be awarded any relief from or against Respondent.

III.
PROPOSED CIVIL PENALTY

Respondent denies that any penalty against it is authorized or appropriate in the circumstances.

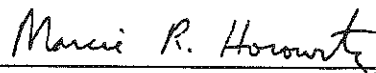
IV.
REQUEST FOR HEARING

Respondent hereby requests a hearing to contest the factual allegations set forth in Complainant's Complaint and proposed compliance order and to contest the appropriateness of any proposed compliance schedule or penalty.

V.
REQUEST FOR SETTLEMENT CONFERENCE

Respondent hereby requests an informal settlement conference.

WHEREFORE, Respondent Hoosier Spline Broach Corporation prays that the Complaint, Compliance Order and Proposed Civil Penalty be dismissed with prejudice, that judgment be awarded for Respondent and against Complainant, for its costs and attorneys' fees, and for all other appropriate relief.



Marcie R. Horowitz (Attorney No. 15761-49)

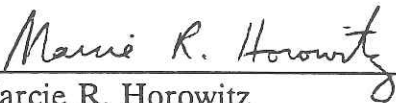
BARNES & THORNBURG
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204

Attorney for Hoosier Spline Broach
Corporation

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of "Answer to Complaint and Request for Hearing" has been served this 31st day of August, 1993, by depositing a copy of the same in the United States mail, first class postage prepaid and properly addressed to the following counsel of record:

John Tielsch, Esquire
Assistant Regional Counsel (CS-3T)
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590



Marcie R. Horowitz

